



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

*Largest Circulation of any Journal dealing with the
Landed Interests.*

ESTABLISHED 1858.

THE "ESTATES GAZETTE"

A JOURNAL DEVOTED TO

Land, House Property and Agricultural Interests.

Proprietor: FRANK P. WILSON.

OFFICE: 6 ST BRINE STREET FLEET STREET LONDON.

Pr

DE,

J. A. HAMILTON.

**GOLDSMITH BUILDING,
TEMPLE.**

The **onage of**
Auctioneers, Surveyors, Land, House and Estate Agents, Land Owners and
Solicitors. Its pages contain special reports of Law Cases, interesting to
the profession—such as Commission Cases, Disputed Agency questions,
Surveyors' Fees, Compensation Cases and Rating Appeals, and a quantity
of general information.

To those in any way connected with Real Property, the *Estates Gazette*
will be found invaluable for reference. It is filed at all the principal Hotels,
Clubs, Law Societies and Reading Rooms in the Kingdom. It affords an
excellent medium for Advertisements of Sales, announcements of Estates,
Residences and Farms to be Let; and, indeed, for all notifications con-
cerning Land which require publicity.

An important feature is the accurate list of FORTHCOMING SALES and the
RESULTS OF SALES, offering an advantage to Speculators in Real Estate
which cannot be obtained elsewhere. Sales by Private Treaty, Historic
Estates, Bric-à-brac, Occasional Notes, Legal Topics, Notes by the Way,
Personal Paragraphs, Agricultural Notes, Legal Proceedings, and Provincial
Property Sales are the headings of some of the principal subjects.

Solicitors and Land and Property Owners extensively support the *Estates
Gazette*, and it is recognised in the state of the
Property Market. Numbered among its subscribers many of the
most influential persons interested in Real Property, the *Estates
Gazette* offers advantages not elsewhere for making public
all matters connected with the

PUBLISHED ANNUALLY EARLY IN NOVEMBER.

Demy 8vo. Half-bound in Calf, 8s. ; Net. 6s. In Cloth,
5s. Post Free.

*(Cash must be sent with Order, and Net Prices are only to be obtained
direct from the Office.)*

A Diary and Directory

FOR THE USE OF

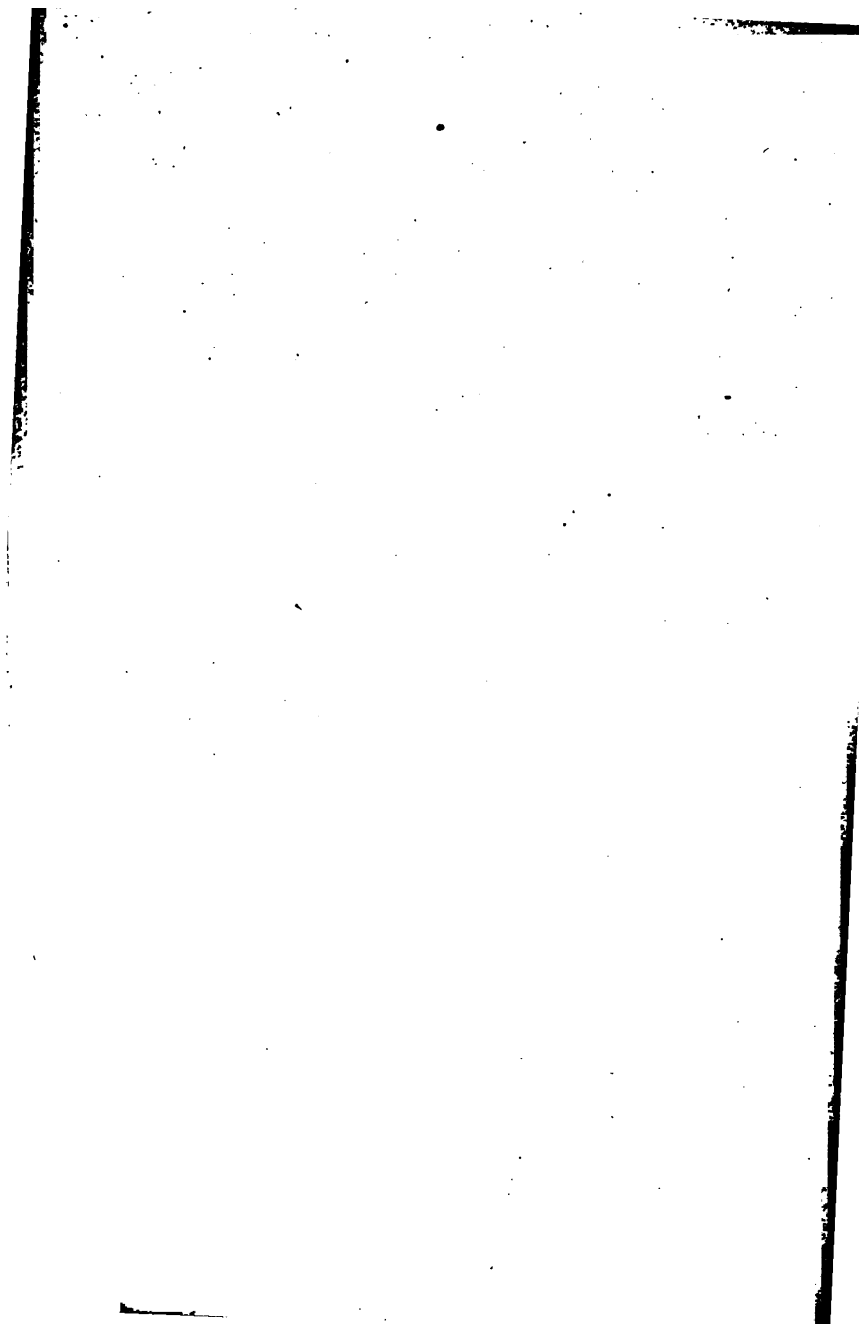
SURVEYORS, AUCTIONEERS,
LAND AND ESTATE AGENTS,

Containing a List of the Principal Auctioneers, Land and Estate Agents in London and the Country; the names and addresses of the Members of the Surveyors' Institution, the Auctioneers' Institute, and Institute of Estate and House Agents; the Text of the Acts affecting Agriculture and Property passed last Session; an index to numerous Disputed Claims for Auctioneers' and Estate Agents' Commission on the Selling or Letting of Property; a List of Provincial Hotels where Sales usually take place; the names of the principal Bill Posters in the Provinces; a Summary of the Claims for unexhausted Improvements since the passing of the Agricultural Holdings Act; the Customs of the Country as between Incoming and Outgoing Tenants; a large number of useful Tables for Land Agents and Auctioneers; the Scales of Professional Charges adopted by the leading firms; a List of the County Surveyors; various Forms, &c., and a mass of useful information important to Surveyors, Land Agents, Auctioneers, Valuers and House Agents; together with

A Diary of One Page for Each Day.

WITH OR WITHOUT COLUMNS FOR CASH.

Published by FRANK P. WILSON, at the ESTATES GAZETTE Office, 6, S
Bride Street, Fleet Street, London, E.C.



JSN
TAL
R

COMPENDIUM
OF
COMMISSION CASES.



2

A COMPENDIUM OF COMMISSION CASES:

BEING
A COLLECTION OF CASES ON THE LAW RELATING TO
AUCTIONEERS' AND ESTATE AGENTS'
COMMISSION.

BY
G. ST. LEGER DANIELS, LL.B. (LOND.),
And of the Middle Temple, Barrister-at-Law.

THIRD EDITION
(Revised and greatly Enlarged).

—:O:—
“*Cavendo Tutus.*”
—:O:—

FRANK P. WILSON,
“ESTATES GAZETTE” OFFICE, 6, ST. BRIDE STREET, LONDON, E.C.

1900.

LONDON:

Printed at the ESTATES GAZETTE Office,

6, St. Bride-street, E.C.

L 5212

FEB 10 1932

WAGG & GORDON

PREFACE TO THE FIRST EDITION.

An endeavour has been made to render this volume a handbook of the law as to Auctioneers' and Estate Agents' Commission, the object being to give members of those professions an opportunity of finding at a glance a modern precedent for any dispute on the subject in which they may become involved ; in fact, to enable them to act in ordinary cases as their own lawyers, whilst remembering that in serious complications time, trouble and expense is generally saved by consulting a Solicitor.

A brief and business-like *résumé* of the cases has been aimed at, one comprehensible to the lay mind, and at the same time, it is hoped, not altogether without use to lawyers. There has been no unnecessary multiplication of the authorities.

Care has been bestowed on the index, and in the Appendix will be found a few cases which are not of sufficiently recent date to be within the scope of the Compendium, but which it has been thought advisable to add on account of their general importance.

G. ST. L. D.

Temple,

August, 1889.

PREFACE TO THE SECOND EDITION.

The present edition has been brought down to July, 1893, and in compliance with the views of many readers, the dates and references to more detailed reports have been added to all the cases. In noting this alteration it is, however, deemed advisable to remind laymen that *nisi prius* and county court cases are not regarded as authorities in courts of law. The chief object of the Compendium, of which the reception has been most satisfactory, is to furnish a guide to Auctioneers and Estate Agents, though it is hoped that lawyers also may not find it altogether without use. There are few disputes as to commission of which examples do not appear in the volume.

G. ST. L. D.

Temple,

October, 1893.

PREFACE TO THE THIRD EDITION.

In the preface to the second edition of this work readers were reminded that *nisi prius* and county court cases are not regarded as authorities in courts of law. The object of the Compendium, it was added, was to furnish a guide to auctioneers and estate agents, to give them an opportunity of finding a case which might be useful and instructive as an illustration of the law, though it could not claim the dignity of a precedent. The book, in fine, attempts to teach laymen by example. It could only be of casual use to lawyers.

It is somewhat strange, in view of the intimation above mentioned, that several correspondents should have been at the pains to point out to the author that a large proportion of the cases given were not such as could be quoted to a judge or judges. But it is submitted that for members of the profession for which they are intended they have their proper use. As a matter of fact, though one critic writes that he looks upon it as furnishing "entertaining reading" only, there are really no disputes as to commission of which illustrations do not appear in the following pages, and illustrations furnished by firms of the highest status, who, one may be quite sure, had the best possible advice before going to law. The Compendium, then, we hope, may be fairly described as a practical guide for practical men.

In bringing the work down to the Long Vacation of 1900 the opportunity has been taken to cut out many

viii PREFACE TO THIRD EDITION.

of the cases which were given in the two previous editions, substituting therefor others of more recent date concerned with the same subjects. This course was necessary in order that the size of the volume might be kept within due limits, and may be further justified by what we believe to be the fact—that a knowledge of such hackneyed questions as the right of a first introducer to commission, and so on, is much more common than it was some years ago—a result which we are glad to think may be in some measure due to the favourable reception which has been accorded to this Compendium.

G. ST. L. D.

1, Pump Court, Temple,
October, 1900.

TABLE OF CASES.

—:0:—

A.

	PAGE
<i>Bigham</i> Adams Brothers v. The British, etc., Bank ...	370
Addison v. Miles	155
<i>Bruce</i> Alice v. Fisher	267
Aldridge v. Kynaston	358
Andrade v. Toléman	115
Ashton v. Bailey	79

B.

	Bacon v. Fielding	32
	Bailey v. Purdue	191
<i>Charles G</i>	Bailey v. The Commercial, etc., Company ...	215
	Baker v. Taylor	116
	Bance v. Bailey	207
<i>Charles</i>	Barker v. Macnaghten	204
<i>Lopes</i>	Barnett v. Brown	131
<i>CA</i>	Barnett v. Isaacson	43
<i>H/L</i>	Bayley v. Chadwick	2
<i>Phillips</i>	Beal v. Carter <i>CA</i>	356
<i>Colander G</i>	Belton v. Burrows	22
<i>Dir. Ct.</i>	Beningfield v. Kynaston	9
<i>Day</i>	Beningfield v. Lady Brooke	170
	Bland v. Lansdown	137
	Bond v. Macer	315
<i>Lawrence</i>	Bone v. Johnston	280
	Bott v. Hartley	54
	Bowen v. Walker	316
	Bray v. Dalgleish	31
	Brightwell v. Parry	77
	Brodie v. Fitzwilliam	298
	Brodie v. Williams	181

	Brunt v. Mellor	...	...	...	...	141
	Bull v. Hebden	...	...	...	...	100
<i>Darling</i>	Bunting v. Crane	...	...	...	...	301
	Butcher v. Breem	...	...	...	...	45

C.

	Cane v. Holmes	...	...	...	...	48
	Cane v. Moon	...	...	...	...	134
<i>Cherry</i>	Carter v. Baker	...	...	...	...	307
<i>Sigham</i>	Challen v. Silcock	...	...	...	...	340
<i>Grantham</i>	Chesterton v. Ackers	...	...	...	...	138
	Chilman v. Rowbotham	...	...	...	...	96
<i>Will</i>	Church v. The Hotel, etc., Company	...	...	...	...	278
<i>Charles</i>	Clark v. Deuchar	...	...	...	...	133
	Clark v. Haines	...	...	...	...	80
	Clark v. Sandys	...	...	...	...	151
<i>Cockburn</i>	Clark v. Smythies	...	...	...	...	379
	Climpson v. Symons	...	...	...	...	262
<i>Day</i>	Coates v. Fry	...	...	...	...	161
	Collins v. Hagge	...	...	...	...	110
<i>CA</i>	Collins v. Oliver	...	...	...	...	202
	Cooksey v. Braxton	...	...	...	...	304
	Cooper v. Bird	...	...	...	...	333
	Copping v. White	...	...	...	...	88
<i>Night</i>	Copping v. Kennard	...	...	...	...	243
<i>Darling</i>	Cox v. Cardinall	...	...	...	...	335
	Crouch v. Reynolds	...	...	...	...	224

D.

<i>Hawkins</i>	Daggatt v. Ratcliffe	...	...	...	...	56
	Davis v. Dent	...	...	...	...	75
<i>Day</i>	Davis v. Mona Hotel	...	...	...	...	169
	Davy v. Thompson	...	...	...	...	173
	Day v. Harris	...	...	...	...	37
<i>Grantham</i>	Debenham v. Chambers	...	...	...	...	242

TABLE OF CASES.

xi

PAGE

Debenham v. Clark	57
Debenham v. Slazenger	353
De Jersey v. Mobbs	25
Dickins v. Coldwells	212
Downes v. Chapman	266
Driver v. Lord Camden's Trustees ..	10
Duckworth v. Prickett	190

E.

<i>Pollock's</i> Edwards v. Lord Carbery	283
Edwards v. Welford	261
Eiloart v. Kingston	120
Eiloart v. Robinson	17
Esam v. Carter	116
Evans v. Hill	70
<i>Cave</i> Everill v. Walker	178

F.

<i>Manisty</i> Farebrother v. Cox	7
Field v. The Electric Metric Syndicate ...	226
<i>C-A</i> Fisher v. Drewett	384
Fredericks v. Floyd	147
Fromelius v. White	350
Fuller v. Ball	19

G.

Gage v. Searle	4
Geen v. Lound	275
<i>Cave</i> Giddy v. Benyon	263
<i>Chidley's</i> Giddy v. English	327
Giddy v. Harper	38
Giddy v. Pink	61
<i>Vaughan v. Williams</i> Giddy v. Ross	171
Giles v. White	140
Gill v. Burbidge	91
<i>CA</i> Gillow v. Lord Aberdare	183

	PAGE
Gliddon v. Rescul	355
<i>Nathan</i> Godwin v. Hart	285
Golberg v. Westlake	179
Goodeve v. Coxson	105
Gray v. Hayward	127
Greatorex v. Shackles	231
<i>Dr. C.</i> Green v. Bartlett	377
Green v. Stiles	130
<i>Cave</i> Greigg v. Melnotte	187
<i>Dr. C.</i> Griffin v. Cheesewright	26
<i>Granttham</i> Grogan v. Smith	126
Gudgeon v. Cowper-Smith	362

H.

Haltridge v. Tunbridge Wells Benefit Building Society	113
<i>Nathan</i> Hampton v. Bruce	210
<i>Bruce</i> Hammond v. Feast	213
Harman v. Nowell	93
<i>Pollock B.</i> Harris v. Luckes	94
Harris v. Evans	238
Harrison v. King	193
Harrison v. Tyers	191
Hartley v. Smith	39
Haynes v. Jackson	260
<i>Bruce</i> Hazell v. Scott	339
Hellier v. Barnett	3
Helmores v. Buschman	52
Hockley v. Foot	53
Hoddell v. Hedges	271
<i>Day</i> Holland v. Baker	264
Homer v. Rugg	111
Hope v. Nelson	122
<i>Day</i> Horncastle v. Pigot	128
<i>Day</i> Horne v. Eberle	50

TABLE OF CASES.

xiii

PAGE

	Houghton v. Orgar	...	...	...	23
<i>Day</i>	Houghton v. Scott	...	...	...	30
	Hughes v. Curtis	...	...	...	518
	I.				
	Inman v. Child	...	...	...	251
	Inman v. Warr	...	...	...	34
<i>Franklin</i>	Isaac v. Fraser	...	...	...	122
	J.				
	Jackson v. Bucks District Supply Company	...	...	...	177
	James v. Ramley	...	...	...	240
	Jolly v. Carter	...	...	...	20
	Jolly v. Sharp	...	...	...	36
	Joyce v. Jones	...	...	...	198
	K.				
	Kay v. Allen	...	...	...	125
	Kingwell v. Garden	...	...	...	167
<i>Pollard & B</i>	Kirk v. Evans	...	...	...	97
	L.				
	Lamb v. Theobald	...	...	...	250
	Langburn v. Robinson	...	...	...	166
	Langley v. Rossell	...	...	...	16
	Lawrence v. Hudson	...	...	...	24
	Lewis v. Goodenough	...	...	...	257
	Liell v. Boulter	...	...	...	182
	Longman v. Bright	...	...	...	342
<i>LA</i>	Lott v. Outhwaite	...	...	...	200
	Lumley v. Beckstein	...	...	...	86
	Lumley v. Hoolahan	...	...	...	247
	Lumley v. Lord Walsingham	...	...	...	305
<i>Smith & Co. v. J.</i>	Lumley v. Nicholson	...	...	...	27
	M.				
<i>Laurance</i>	Major v. Tarrant	...	...	...	155
<i>Grant & M</i>	Mann v. Rich	...	...	...	313

		PAGE
<i>Bone</i>	Mansell v. Clements	385
	Marler v. Roberts	153
	Marshall v. Andrews	185
<i>Bruce</i>	Marshall v. Sharp	323
	Marshall Parkes v. Hill	230
<i>Lawrence</i>	Martin v. Barnard	365
<i>Theoiger</i>	Martin v. Burn	1
	Martin v. Knight	103
<i>Colony of</i>	Mason v. Dixie <i>Pollard B</i>	143
<i>Colony of</i>	Mason v. Lindsay	5
	Masters v. Martin	331
	May v. McGubbin	248
	May v. Schreiber	337
	May v. Smith	277
	Melhuish v. Horncastle	158
	Millar v. Fryer	241
<i>Colony of</i>	Millar v. Toulmin	62
<i>Huddleston</i>	M'Leod v. Artola	101
	N.	
	Newson v. Tillett	372
<i>Colony of</i>	Nicholas v. Malet	274
	Nicholas v. Thompson	237
	Nicholas v. Watkins	146
<i>Anglo-British</i>	Norton v. Thomas	233
<i>Bruce</i>	Nosotti v. Auerbach	324
	O.	
<i>AL Smith</i>	Oetzmann v. Emmott	18
	Ogden v. Belcher	272
	Owers v. Woodward	208
	P.	
<i>North</i>	Parkinson v. Howell	6
<i>Grantham</i>	Parr v. Headdey	121
<i>Kennedy</i>	Passingham v. King	257

TABLE OF CASES.

XV

					PAGE
<i>CA</i>	Peacock v. Freeman	...	...	...	41
	Pells v. Smith	...	...	...	68
<i>Will</i>	Perks v. House	...	...	...	310
<i>Bruce</i>	Pidsley v. Carr	...	...	...	311
	Pierce v. Aldridge	...	...	...	176
<i>Ridley</i>	Piercy v. Seaward	...	...	...	351
<i>Granham</i>	Piggott v. Palmer	...	...	...	258
<i>Dw-C</i>	Pinchbeck v. Wootton	...	...	...	33
<i>Charley</i>	Platt v. Depree	...	...	...	188
<i>Bollock B</i>	Pothonier v. Seckham	...	...	...	45
	Prebble v. Tufnell	...	...	...	81
<i>LCB</i>	Prickett v. Badger	...	...	...	381
<i>Rothew</i>	Prince v. Dashwood	...	...	...	253
	Pritchard v. Reynolds	...	...	...	165
R.					
<i>Rothew</i>	Rankin v. Webb	...	...	...	255
<i>CA</i>	Reeves v. Goodwin	...	...	...	300
	Richards v. Branscome	...	...	...	109
	Richards v. Game	...	...	...	114
	Richards v. Hudson	...	...	...	136
	Richell v. Selous	...	...	...	47
<i>Donnan</i>	Robbins v. Lewer	...	...	...	175
	Robins v. M'Kay	...	...	...	139
	Robinson v. Benjamin	...	...	...	256
	Rogers v. Clarke	...	...	...	273
	Rogers v. Hampden	...	...	...	34
	Rutter v. Downes	...	...	...	148
S.					
	Sadler v. Edwards	...	...	...	104
<i>Hankins</i>	Saunders v. Taylor	...	...	...	197
	Sleisinger v. Gullin	...	...	...	249
	Southey v. Holloway	...	...	...	112
<i>Unlth</i>	Sovereign Life Assurance Company (<i>In re</i>)	...	...	...	159

		PAGE
	Strevens v. Henderson	236
	Stutely v. Weller	82
<i>Change LG</i>	Suett v. Dillon	150
	T.	
<i>Hankins</i>	Tanner v. Green	156
<i>Dw. Ct.</i>	Taplin v. Barrett	98
	Theobalds v. Meakin	152
	Theobalds v. Salaman	90
<i>CA</i>	Thompson, Rippon and Co. v. Thomas	216
	Titherley v. Richards	58
	Towers v. Corfield	149
<i>Change of Day v</i>	Trangmar v. Prickett	320
<i>Wright</i>	Trollope v. Hamilton	117
	Tucker v. Savage	158
	W.	
<i>Bigham</i>	Walton v. Lord Churchill	288
	Walton v. Lucas	13
	Walton v. Smirke	74
	Wansbrough v. Lewis	71
<i>Will</i>	Walters v. Marshall	346
	Waterer v. Horrell	75
	Webster v. Wright	108
	Wharton v. Smith	87
	White v. Bainton	154
<i>Grove</i>	White v. Lucas	15
<i>Grove</i>	Wickenden v. Fowler	11
<i>Lawrence</i>	Williams v. Tuckett	361
	Winckworth v. Ellis	341
	Woods v. Burchett	106
	Woodward v. Shepherd	143
<i>Dw. Ct.</i>	Wright v. Hall	228
	Wright v. Wiltshire	73

COMPENDIUM OF COMMISSION CASES.

Martin v. Burn.

Liverpool Assizes, February 8, 1879.—Before Lord Justice
Thesiger and a Special Jury.

Reported ESTATES GAZETTE, Vol. xxi., p. 104.

*Alleged introduction of purchaser—Sale not really effected
thereby.*

This was an action brought by the plaintiff, a land and estate agent, to recover a sum for commission alleged to be due to him from the defendant in consequence of his introducing a purchaser for certain property in Harrington Street, Liverpool.

The plaintiff's case was that in June, 1878, he became aware that a Mr. Banner was likely to be a buyer of premises in Harrington Street, and saw him on the subject, and afterwards saw the defendant and stated that he thought he had a client who would purchase the property in question on reasonable terms. Mr. Banner's name was mentioned and Mr. Burn handed the plaintiff particulars of the property, an agreement as to commission in case of sale being entered into. Mr. Banner, through the plaintiff, then offered £9,000 for the property, which was rejected by the defendant, who subsequently sold direct to Mr. Banner for £11,000. On behalf of the plaintiff it was urged, on the authority of "*Green v. Bartlett*," that the plaintiff had been the effectual cause of the sale; in other words, that he had really brought about the relation of buyer and seller between the parties.

The defendant's case, however, was that when he, being also a land agent, had purchased other adjacent property with a view of making alterations in it and re-selling, and in the course of the alterations Mr. Banner had complained of and threatened proceedings about an interference with the lights of his property, a purchase by Mr. Banner of

2 COMPENDIUM OF COMMISSION CASES.

the defendant's premises at a fair price was suggested by the solicitors engaged as the best way of settling the difficulty. This was done, and it was contended that the property was not on sale in the ordinary sense of the phrase, and that the plaintiff had not been instrumental in bringing about the transaction. The plaintiff, by his counsel, admitted that upon these facts he could not recover, and a juror was withdrawn.

Counsel for the plaintiff: Mr. Aspinall, Q.C., and Mr. Mulholland; counsel for the defendant: Mr. Russell, Q.C., and Mr. Crompton.

Bayley and others v. Chadwick.

House of Lords, November 7, 1878.—Before the Lord Chancellor, Lord Selborne, Lord O'Hagan and Lord Penzance.

Reported ESTATES GAZETTE, Vol. xxii., p. 24.

Indirect introduction—A chain of agency—Property introduced by Auctioneers to A.B., who introduces it to C.D.

The defendant was the official liquidator of the Bessemer Saloon Steamship Company, and was sued by the plaintiffs, who were ship auctioneers in Cowper's Court, Cornhill, for £200, being a commission of 1 per cent. upon the sale of the "Bessemer" for £20,000.

An agreement as to the sale of this ship by the plaintiffs having been made, it was put up to auction, when no bid was made and the plaintiffs only became entitled to their auction fee of 10 guineas. But a further clause in the agreement provided that in case any subsequent sale should be effected to any person or firm introduced by the plaintiffs, or led to make an offer by their mention or publication of the matter for auction purposes, then the plaintiffs should become entitled to their commission of 1 per cent. The plaintiffs received their 10 guineas, and some time afterwards received a communication from Mr. Pearson, of Hull, who stated that he had met Mr. Sugden, of Leeds, and Mr. Gilbert, his agent, and that Mr. Sugden might perhaps go as far as £30,000 for the ship. However, an offer of £20,000 only was made, which was about to be acted upon when the plaintiffs were informed that another disposition of the vessel had been made. This referred to the fact that it had been sold to a Mr. Wilson for £20,000, but it turned out that that gentleman really bought for Mr. Sugden,

so that the plaintiffs' right to commission was not interfered with. The substantial defence was that Mr. Sugden had not been led to purchase in consequence of "any mention or publication of the matter for auction purposes" by the plaintiffs, but the jury found that he had, and gave a verdict in his favour for the full amount of his claim. The case was taken to the House of Lords where the verdict was confirmed. The Lord Chancellor observed that originally Pearson had been in communication with the plaintiffs, and although he might not at first have been the agent of Sugden, he nevertheless became so in the course of the negotiations, and the terms of the written contract had been fulfilled.

Counsel for the plaintiffs: Mr. Murphy, Q.C., Mr. Edwyn Jones and Mr. A. E. Nelson; counsel for the defendant: Mr. Herschell, Q.C., and Mr. Reed.

Hellier v. Barnett.

Wolverhampton County Court, April 12, 1880.—Before his Honour Judge Griffith.

Reported ESTATES GAZETTE, Vol. xxiii., p. 246.

Purchase incomplete—There must be a sale or a binding agreement for a sale before commission can be claimed.

Mr. Hellier, an estate agent, sought to recover the sum of £20 from the defendant, a money lender in Wolverhampton, for commission alleged to be due for obtaining a purchaser for nine houses in Brick-kiln Street. The facts were that the defendant had asked the plaintiff to obtain him a purchaser, and said he wanted about £850 for the property. The plaintiff stated that if he obtained a purchaser he should expect a commission of 2½ per cent., and subsequently introduced a gentleman who expressed his willingness to buy the property. The defendant asked for a deposit of £100, and for the purchaser to sign an agreement there and then, but the latter wished to go to his solicitor. The defendant declined to take this trouble, and the purchaser went to see his solicitor alone. Meanwhile the defendant told the plaintiff that he should want another £10 for the property, as he had commenced making some repairs. The plaintiff thereupon told the defendant that the purchaser would have nothing more to do with the matter, and the negotiations were broken off. In cross-examination, the

4 COMPENDIUM OF COMMISSION CASES.

plaintiff was asked whether any written contract had been entered into between himself on behalf of the defendant and the intended purchaser, as was necessary in the case of an agreement with regard to the sale of real property under the provisions of section 4 of the Statute of Frauds, and as he replied in the negative, the learned judge directed him to be non-suited.

Counsel for the plaintiff: Mr. E. T. Cresswell; counsel for the defendant: Mr. Plumptree.

Gage and Gay v. Searle.

Bristol County Court, January 14, 1881.—Before his Honour Judge Metcalfe.

Reported ESTATES GAZETTE, Vol. xxiv., p. 40.

Notice at head of auctioneers' list—Customers bound—Presumption that list has been read.

This action was brought to recover the sum of £6 for commission on the sale of a business. The plaintiffs were public-house brokers, and it appeared that the defendant went to them and asked them what businesses they had for sale, and they gave him a list, at the head of which were some printed conditions, in which it was set forth that the commission on the purchase or sale of a business was 5 per cent. on the first £100 of the purchase-money. The defendant afterwards took one of the businesses, thereby, according to the plaintiffs, rendering himself liable to pay them a commission, but it was argued on his behalf that all the plaintiffs had done was to hand him a list of businesses which they had for sale, and that he could not be bound by any printed conditions upon the list unless they were specially drawn to his attention at the time. The house in question had been withdrawn from the plaintiffs' hands before the defendant had purchased it. The learned judge, however said that house agents, often losing their commission, took care to have the conditions upon which they undertook to let or procure houses for customers printed on their lists, and a person who took a document with a notice of that kind from an agent was bound by it, whether he read it or not. In contemplation of law he must be presumed to have read it. Judgment was therefore given for the plaintiffs.

Mr. Nichols appeared for the plaintiffs; Mr. Benson for the defendant.

Mason and Son v. Lindsay.

Guildhall, December 15, 1880.—Before Lord Chief Justice Coleridge and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. xxiv., p. 56.

Sale abortive owing to defect in title—Agent entitled to commission.

In this case the defendant, being anxious to sell a freehold brewery at Hornsey, informed the plaintiffs, who were brewery valuers, in King William Street, City, that the price was £6,000. They alleged that they had found a purchaser, but the purchase could not be completed owing to some defect in the title. It appeared that as the property itself, and not the brewery business, formed the chief ingredient in the value, the plaintiffs had agreed to accept $1\frac{1}{2}$ instead of the usual $2\frac{1}{2}$ per cent., which would be the commission payable on the sale of leasehold property used for brewing. The defence was that until the purchase had been completed and the whole of the purchase-money paid, the plaintiffs were to have nothing more than their expenses out of pocket. On the first hearing of the action the jury found that the plaintiffs were only entitled to the sum of £10 10s., as a *quantum meruit* for their services; but on the second trial a verdict was given in their favour for £99, the full amount of their claim, and Lord Coleridge added that if the matter had been in his discretion, he should have given them all the costs in both trials.

Counsel for the plaintiffs: Mr. Cohen, Q.C., and Mr. J. C. Mathew; for the defendant: Mr. Talfourd Salter, Q.C., and Mr. Darling.

Debenham, Tewson, Farmer and Bridge-water v. Clark.

City of London Court, April 19, 1881.—Before Mr. Commissioner Kerr and a Jury.

Reported *ESTATES GAZETTE*, Vol. xxiv., p. 183.

Procuration fee—Commission payable though not expressly stipulated for—Implied right to charge customary commission.

This action was brought by the well-known auctioneers and house agents to recover from the defendant £13, being the procuration fee of 1 per cent., on obtaining for him an advance of £1,300 on the security of D'Olier Villa, Wandsworth Common.

In support of the plaintiffs' case Mr. Tewson deposed that he had been employed by the defendant to arrange the mortgage, which he did, charging the usual procuration fee of 1 per cent. The property was sold in the auction room, but not by public auction. After the first offer the defendant came to him and spoke about purchasing. A question arose whether any of the money would be allowed to remain, and subsequently Mr. Tewson informed the defendant by letter that he could get him the money necessary at 5 per cent. The defendant's case was that he had expressly stipulated not to pay any procuration fee, but this was denied by Mr. Tewson, who alleged that the subject of procuration or commission was not mentioned, and founded his claim on his right to make a reasonable charge for services rendered. It was admitted on behalf of the plaintiffs that the gentlemen who had made the advance were not clients of theirs, but it was stated that they were persons known by Messrs. Debenham and Co. to be able to advance money on properties. A verdict was given for the plaintiffs for the full amount of their claim.

Parkinson v. Howell and another.

Guildhall, December 9, 1881.—Before Mr. Justice North and a Common Jury.

Reported *ESTATES GAZETTE*, Vol. xxiv., p. 631.

First introduction efficient cause of sale—Two commissions payable.

The plaintiff in this case was an auctioneer and estate agent, carrying on business in Addison Road, Kensington, and the defendants were builders, having house property in Shepherd's Bush. The action was brought to recover £94 17s. 6d., commission alleged to be due on the sale of five houses to a Mr. Tippetts, who was introduced to the defendants by the plaintiff, but who at first made no offer to buy, though he thoroughly examined the property. Afterwards, Mr. Parnell, another auctioneer, called on the defendant and asked them if they had any property to put in his next sale at Tokenhouse Yard, and the five houses in question were put in the catalogue, and a copy was sent to Mr. Tippetts. About ten days before the sale that gentleman called on Mr. Parnell and offered £3,000 for the five houses, which offer was declined. At the

auction a Mr. May appeared for Mr. Tippetts and bought one house under the hammer for £780, and on the same day Mr. May, Mr. Parnell and Mr. Howell had a discussion which resulted in Mr. May purchasing three more of the houses for £735 each. Eventually Mr. Parnell sold Mr. May the remaining house for £710, and only received £54 from the defendants for his commission.

Mr. Tippetts deposed that if it had not been for the preliminary negotiations and the acquaintance with the property which he acquired in consequence, he would not have given Mr. May instructions to act for him at the auction. Mr. Justice North told the jury that there were cases in which commission might be payable to more than one claimant, and if they thought that the introduction of Mr. Tippetts to the defendants by the plaintiff was the cause which eventually led to the purchase, they must find a verdict for the plaintiff, but for the defendants if they considered that there was an entirely independent transaction dating from the receipt by Mr. Tippetts of Mr. Parnell's sale catalogue.

The jury found for the plaintiff for the full amount of his claim.

Counsel for the plaintiff: Mr. Meadows White, Q.C., and Mr. Armytage; for the defendants: Mr. Willis, Q.C., and Mr. Wheeler.

Farebrother and Co. v. Cox.

Queen's Bench Division, July 18, 1883.—Before Mr. Justice Manisty and a Special Jury.

Reported ESTATES GAZETTE, Vol. xxvi., p. 228.

*Alleged custom of Trade—Commission on lots bought in—
Quantum meruit.*

In the summer of 1882, the defendant had intimated to the plaintiffs that he wished to give them instructions to sell his private house in Wimpole Street, and his valuable collection of pictures in Pall Mall. At the beginning of November in that year Mr. Cox said that he wished the plaintiffs to advance him £2,000, for which he would deposit as security a large picture by Mr. Frith, R.A., known as the "Salon d'Or at Hamburg," and also give his promissory note. A few days afterwards the terms upon which they were to sell his property were arranged. They were to make him an advance of £2,000, which they did,

and to undertake the sales by auction of the whole of his pictures, of the lease of his house in Wimpole Street with the furniture there, and of his freehold and leasehold premises, Nos. 57 and 58, Pall Mall, whilst he promised to employ them to act for him as auctioneers and agents, and to pay them a commission of $7\frac{1}{2}$ per cent. on the amount realised by the sale of his pictures, subject to a rebate of $2\frac{1}{2}$ per cent., to include all expenses, and one of 6 per cent. on the sale of his house and effects at Wimpole Street and his property in Pall Mall. Before the first sale the defendant suggested a reserve being put on some of the pictures, and consequently when these prices were not reached at the sales the pictures were knocked down to Mr. Cox or his agents. The value of the pictures knocked down at the sales amounted to £14,836, but that of those actually sold was £3,255. The plaintiffs claimed commission on the larger sum, but the defendant alleged that he was only bound to pay it on the smaller amount. In other words, though the action was nominally brought to recover £2,000, the amount of the unpaid promissory note, the plaintiffs' case substantially was that they were entitled to commission upon the whole of the pictures put up for sale by them for Mr. Cox, whether sold to members of the public or to himself or his agents; or, in the alternative, to a commission of 5 per cent. on those sold to the public and to one regulated by the custom of the trade on the lots bought in, or, at any rate, to a *quantum meruit* in respect of such last-named pictures. They sought to show that when an auctioneer was employed to sell pictures at a fixed rate of commission, and the owner afterwards directed him to put a reserve on some of them (which were as a matter of fact subsequently bought in) there was a custom which entitled the auctioneer to be paid a commission on those bought in. The proof of such a custom, however, was not established, as the evidence went to show that it was not general throughout the trade, but the amount claimed by auctioneers under the circumstances varied with different firms.

Mr. Justice Manisty, in summing up, said that in his opinion the plaintiffs were only entitled to the agreed commission on the amount received by them from the public, though the buying-in by the defendant was only a postponement of the sale, and the plaintiffs might have a right at the proper time to require the defendant to

employ them to sell the pictures bought in. It would be advisable for the parties to come to terms, but as the case stood he must direct the jury to find for the defendant. Judgment accordingly with costs.

Beningfield v. Kynaston.

Queen's Bench Division, November 26, 1886.—Before Mr. Baron Huddleston and Mr. Justice Manisty.

Reported *ESTATES GAZETTE*, Vol. xxix., p. 58; and Vol. xxx., p. 27

Purchaser failing to complete—Agent's right to commission.

In this case the plaintiff, an auctioneer, valuer and estate agent in the City, was, in January, 1883, applied to by the defendant, a tenant for life, to obtain for him a purchaser for an estate called Northlands, at Stanford-le-Hope, in Essex. The agent was to have "the usual commission out of the purchase-money." The plaintiff found a purchaser for the estate for £5,250, and the purchaser paid the 10 per cent. deposit, £525. The contract contained the condition "that if from any cause the purchase shall not be completed on June 1 the purchaser shall pay interest, and if the purchaser shall fail to comply with the condition, the sum of £525 shall be forfeited." The purchaser failed to complete and so forfeited the deposit-money, which was retained, and the estate was put up for sale by auction, and sold for £6,100 to another purchaser. The plaintiff then claimed his commission of 2½ per cent. upon £5,250, amounting to £135. The claim was disputed, and hence this action, which was tried before Mr. Justice Hawkins and a jury, before whom it was contended on behalf of the plaintiff that a purchaser had been found, as a deposit had been received from him and retained. On the other side, it was insisted there was no real purchaser. The learned judge left it to the jury whether there was a purchaser able to complete the purchase. The jury found in the negative, and the learned judge gave judgment for the defendant, the vendor of the estate. The Divisional Court (Mr. Baron Huddleston and Mr. Justice Manisty) set this judgment aside, and decided for the plaintiff, the agent, for the amount of the commission—that is, the commission on the original sale. The defendant appealed, and the original judgment in his favour was restored by

10 COMPENDIUM OF COMMISSION CASES.

the Master of the Rolls and Lords Justices Bowen and Fry. Their lordships were of opinion that the real contract between the parties was that commission should be paid out of the purchase-money, and not to pay commission if a purchaser was found, whether he completed or no. "The true construction of the agreement," said Lord Justice Bowen, "was that the commission should be paid only if the purchase-money was received, and received from the purchaser found by the agent.

Counsel for the plaintiff: Mr. Willis, Q.C., and Mr. Firth; counsel for the defendant: Mr. Waddy Q.C., and Mr. Raven.

Driver and Co. v. The Trustees of the Marquis of Camden.

Chancery Division.—Before Mr. C. M. Roupell, Official Referee.
Reported ESTATES GAZETTE, Vol. xxx., pp. 52, 101 and 117.

Rate of Commission—Evidence of custom of trade—Large property.

The plaintiffs were the well-known firm of land agents and surveyors, Messrs. Driver and Co., of Whitehall, and the defendants were the trustees of the Marquis of Camden and their solicitors. The cause of the action arose out of the sale of the Wilderness Estate at Seven-oaks, the plaintiffs claiming the sum of £1,486 as commission and incidental expenses in connection with the sale and valuation of timber, they alleging that the purchaser was introduced by them and that they were instructed to negotiate and conclude the sale of the estate.

In supporting the claim Mr. Robert Collier Driver deposed that his valuation had been £170,000 for the whole of the estate, with the timber in addition; and the portion bought by Sir Charles Mills was valued by him at the amount of the purchase-money, *v.z.*, £160,000. On this amount he had charged $\frac{1}{2}$ per cent. commission, which was the usual charge made by surveyors of standing for negotiating a sale of such magnitude, whether the sale took place by auction or by private contract. In the case of "*Brown v. Savage*," in Chancery, the amount realised at three sales was £94,000 and the Court allowed him a commission of 2 per cent. on the first £5,000, 1 per cent. on the second £5,000, $\frac{2}{3}$ per cent. on the next

£10,000, and $\frac{1}{2}$ per cent. on the remainder of the purchase-money at each sale, the various incidental expenses being extra. Mr. Driver then gave the details of the cases in which commissions had been received by him on the sales of estates, including the following: Addington Park Estate, near Maidstone, purchase-money, £16,045; commission paid, 1 per cent. on the whole, with expenses in addition. He had sold five estates for the Admiralty realising £953,504, and valued the timber thereon at £92,461. The commissions varied, but averaged rather more than $\frac{1}{2}$ per cent. and all expenses, and for the timber he was paid on an average $2\frac{1}{2}$ per cent. and expenses. The cases cited were analogous to that of the Wilderness Estate, and the commission obtained had never been disputed.

Mr. Driver's evidence as to the proper rate of commission chargeable in sales of such magnitude was confirmed by members of the firms of Chinnock, Galsworthy and Chinnock, Debenham, Tewson and Co., Daniel Watney and Sons, and several other firms of great eminence, and after such an array of testimony as to the custom of the trade the full amount of Messrs. Driver's claims was awarded them.

Counsel for the plaintiffs: Mr. Tindall Atkinson;
Counsel for the defendants: Mr. Alexander.

Wickenden v. Fowler.

Sussex Assizes, February 20, 1887.—Before Mr. Justice Grove and a Jury.

Reported ESTATES GAZETTE, Vol. xxx., p. 112.

Contract of sale not carried out—Purchaser must be willing as well as able to complete.

This was an action brought by Messrs. H. and F. Wickenden, auctioneers and valuers, of Tunbridge Wells, against Mr. Henry Fowler, solicitor's clerk, at Hastings, to recover the sum of £60, the amount of commission on the sale of a public-house at Hastings. The defence was that the plaintiffs had arranged that no commission should be paid unless the purchase was completed, and that as it was not completed the plaintiffs were not entitled to any commission.

It appeared that a man named Blackwell, the lessee of

12 COMPENDIUM OF COMMISSION CASES.

the Bedford Hotel, Hastings, got into the hands of the defendant Fowler, a solicitor's clerk. There was a mortgage on the house by a man named Hubbard, well known at Hastings as a money-lender, and Mr. Barnes, a solicitor, was also mixed up in the matter. Mr. Barnes came to know that the Bedford Hotel was in the market, and not wishing that anyone at Hastings should conduct the sale, he wrote to Messrs. Wickenden to know whether they would undertake it. He stated that there were circumstances which necessitated a speedy sale, and asked them to divide the commission on the sale with him. Messrs. Wickenden immediately introduced a Mr. Martin, of Greenwich, who was in a position to take the house. Messrs. Wickenden sent a telegram to Barnes to that effect, and later on a letter stating that Martin would come down to Hastings to view the house. They saw the place, and Martin was satisfied with it, and determined, upon the representations made to him, to buy the house. Messrs. Wickenden ascertained from the solicitors to Mr. Martin that he was prepared to enter into a contract for the purchase and carry it out, and he brought that fact to the knowledge of Barnes and Fowler. It was suggested that Martin should hand over a deposit pending the completion of the purchase. Messrs. Wickenden agreed to this, and offered to hold the money. £100 was suggested, but eventually £230 was agreed upon. Fowler and Barnes suggested that Hubbard should hold the deposit, and to this Messrs. Wickenden consented. Accordingly £200 was paid by Martin and went into the possession of Hubbard. The contract was signed to purchase by Martin, the estate at that time being in Fowler's hands. Martin, however, did not complete and forfeited his deposit. This having come to the knowledge of the plaintiffs they demanded payment of their commission, and not receiving a satisfactory answer commenced this action. Mr. Frederick Wickenden gave evidence to the effect that when he went to Hastings to see Mr. Barnes he asked him what he meant by the remark in his letter to "divide the commission." Barnes in reply asked what he would be allowed. Witness said that where solicitors introduced business to them and desired to share the commission they usually allowed one-third. Barnes said that would do, and asked what the charge would be. Witness handed him a printed scale of the firm, which showed that the charge was 5 per cent.

up to £1,000, and $2\frac{1}{2}$ per cent. for the remainder. Barnes replied that that meant a lot of money, and witness said that as the purchase-money was heavy he would accept £60 as commission. Barnes then said, "Very well, you must arrange that with Fowler." It was argued on the plaintiff's behalf that the purchaser would have completed if it had not been for an arrangement come to between the parties behind the back of the plaintiff firm, but Mr. Justice Grove was of opinion that the commission was only to be paid on condition that the plaintiffs found a purchaser. He understood that to mean a person who was not only able but willing to purchase, and held that the plaintiffs must be non-suited.

Counsel for the plaintiffs: Mr. Gill; counsel for the defendant: Mr. Parsons.

Walton v. Lucas.

Westminster County Court, March 10, 1887.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxx., p. 148.

*Where no express agreement usual rate of commission chargeable—
Evidence of custom.*

Messrs. Walton and Co., auctioneers and estate agents, of Sackville Street, Piccadilly, sued Mr. Arthur Lucas, of 31, New Bond Street, fine art publisher, to recover the sum of £30 10s., as commission on letting a portion of his premises to a Mr. Finney, for a term of eight years, at a rental of £340 per annum, with a premium of £100.

It appeared that the defendant gave a representative of the plaintiffs instructions to let the premises, and expressed his willingness to pay their commission if a tenant was found. Shortly after the plaintiffs introduced a gentleman, who made the defendant an offer which he accepted, and an agreement embodying the terms arranged was drawn up at the plaintiffs' offices and signed by the parties, and a deposit of £20 paid to the defendant. Later on that day the defendant saw the plaintiff, and, in the course of conversation, said, "I have made no special arrangement with you as to commission, but I suppose if I give you £20 you will be satisfied?" The plaintiff declined to accept this,

14 COMPENDIUM OF COMMISSION CASES.

and informed the defendant the commission would be calculated on the usual scale, and whatever it worked out at would be charged. On the signing of the lease the defendant wrote to the plaintiff informing him of the settlement, and enclosing a cheque for £20, "commission agreed upon." The plaintiff at once returned it, with an account of their charges, viz., $7\frac{1}{2}$ per cent. on one year's rental and 5 per cent. on the premium. The defendant refused payment, and this action was thereupon brought. The defendant then paid £22 into Court (being at the rate of 5 per cent. on rental and premium), and pleaded that he had tendered this sum before the action in full satisfaction. These facts having been proved by the evidence of Mr. Walton and his clerk, both of whom deposed as to the charges made being fair and usual, Mr. Arthur Chartres, of the firm of Beal, Son and Chartres, estate agents, of 20, Regent Street, W., and Mr. William Jacobs, auctioneer, of 1, Angel Court, Throgmorton Street, were called on behalf of the plaintiffs, to give evidence as to the charge of $7\frac{1}{2}$ per cent. on one year's rental being customary when property is let for more than three years.

The defendant's case was that he first put particulars of his property on the books of Messrs. White, Druce and Brown, who agreed to charge him 5 per cent. if they let it, and offered to take the exclusive agency at $2\frac{1}{2}$ per cent.; he thought, therefore, when giving particulars to other agents, some twenty of whom applied to him, that he would be charged no more by the one who let. He admitted that he made no special arrangements with plaintiffs, but considered they ought to have informed him what their fee would be, and that the charge of $7\frac{1}{2}$ per cent. had been "sprung upon him" after the letting had been completed.

The learned judge, in summing up, told the jury there was no doubt the plaintiffs were entitled to a commission on letting the premises. The question was how much? The defendant said he had arranged with Messrs. White, Druce and Brown; why did he not try to make an arrangement with the plaintiffs? and if he did not know what their charges were he might have asked. As he had not done so, they were entitled to make the usual charges. The jury found for the plaintiffs, for the full amount of their claim.

Mr. Stephen Lynch was counsel for the plaintiffs.

White and others v. Lucas.

Queen's Bench Division, March 24, 1887.—Before Mr. Justice Grove and a Jury.

Reported ESTATES GAZETTE, Vol. xxx., p. 149.

Evidence of retainer of agent necessary—House must be sold through instrumentality of agent.

This was an action by Messrs. White, Berry and Taylor, house agents, of Halkin Street, Hyde Park Corner, against a gentleman residing in Belgrave Square, to recover £382 10s., commission on the sale of a mansion, 94, Lancaster Gate, to a Mr. Tarn, in June, 1884, for £22,000. The defendant denied the employment of the plaintiffs as his agents in that behalf, and alleged that the sale was not effected through the instrumentality of the plaintiffs, but through a Mr. Buckingham, a mutual friend of his and Mr. Tarn's. The defendant said he had refused to allow the plaintiffs to enter the house on their books and registers, but if they would bring him a client of theirs who would offer 25,000 guineas he might entertain the offer; but even then he should not bind himself to sell. It appeared that Mr. Tarn had gone over the house in October, 1883, with one of the plaintiffs' cards, but the negotiations were then dropped until the matter was again brought on in the following year through the intervention of Mr. Buckingham. The plaintiffs made their claim in May, 1885, and repeated it in July; but the defendant referred them to his solicitor and disputed his liability. On July 17, 1885, the plaintiffs wrote to Mr. Tarn, asking what price he had given for the house so that they might make a claim on Mr. Lucas, saying they had introduced him, but Mr. Tarn replied that was a secret between him and the defendant, and he could not reveal it without his permission.

Mr. Justice Grove, in summing up, said there were two questions in the case. First, was there an employment proved by the plaintiffs of their firm as agents—in other words, any "retainer" made out—which the plaintiffs were bound to do before they could charge the defendant commission? Secondly, if so, was it by anything the plaintiffs had done—i.e., through their instrumentality—the best phrase he could adopt—that the house was sold? If these two things were proved to the satisfaction of the jury, then the plaintiffs were

16 COMPENDIUM OF COMMISSION CASES.

entitled to reasonable remuneration. It was not at all improbable that Mr. Tarn would have bought the house if neither he nor the defendant had ever heard of the plaintiffs' firm. The defendant asserted that he was expressly careful not to contract with them so as to be bound by their acts as his agents, and he forbade them to place the house on their books and registers, saying he did not wish to have it "hawked about." The jury found for the defendant.

Counsel for the plaintiffs: Mr. Finlay, O.C., and Mr. R. S. Wright; counsel for the defendant: Sir Charles Russell, Q.C., Mr. Channell, Q.C., and Mr. G. C. Cope.

Langley v. Rossell.

Nottingham County Court, May 24, 1897.—Before his Honour Judge Bristow.

Reported ESTATES GAZETTE, Vol. xxx., p. 277.

Indirect Introduction—Right to Commission—Green v. Bartlett

In this case James Martin Langley, estate agent, Nottingham, sought to recover the sum of £25 for commission alleged to be due in respect of the sale of certain property in Radford Road to a Mr. Smith.

The defendant had placed several properties in the plaintiff's hands in May, 1886, for sale, which were to be inserted in the plaintiff's register with the exception of one lot on Radford Road, the property in question. On May 17 the plaintiff sold one of the above-named properties situated in the Alfreton Road, Nottingham, to Mr. Smith and on the following day the defendant called and paid the commission on the sale of this property, and arranged that £25 should be the commission if the Radford Road property was sold. Shortly afterwards Mr. Smith, the purchaser of the first property, also purchased the Radford Road property. Plaintiff on hearing this demanded commission on the ground that the introduction was through his agency, inasmuch as he had given details of the property to Mr. Smith, the purchaser, at the time the details of the former property were given. This the defendant denied, and called the purchaser as a witness, who admitted having received particulars of the first property from the plaintiff, but denied ever having had details

from him of the second property in Radford-road. The plaintiff then contended that failing the satisfactory proofs of these facts he was entitled to commission as being the means of indirectly introducing the purchaser to the vendor for the purchase of the second property.

The learned judge, after hearing the evidence, quoted "*Green v. Bartlett*" to the effect that if the relation of buyer and seller is really brought about by the act of the agent, he is entitled to commission although the actual sale has not been effected by him. With regard to the facts of the case he added, "The evidence on the whole has satisfied me that the purchaser did in fact obtain particulars of this property from the plaintiff, and in any event it is plain that but for the mediation of the plaintiff the defendant never would have become known to the purchaser at all; therefore there was evidence of the relation of buyer and seller being brought about by the plaintiff's agency. I think it unreasonable to hold that a seller on placing different properties in the hands of an agent for sale, and having through his agency procured a customer for one of the properties, then sells another of the same properties to the same purchaser, should thereby escape the payment of a commission upon both, when in fact he has commissioned the agent to find a purchaser for both. Therefore, even if I had come to the conclusion that Smith, the purchaser, had not obtained any information whatever as to the Radford Road property from the plaintiff himself, I should upon the whole facts of the case have felt bound to decide in the plaintiff's favour." Judgment was given for the plaintiff accordingly.

Mr. E. A. Fraser appeared for the plaintiff, and Mr. Stanger for the defendant.

Elioart v. Robinson.

Marylebone County Court, July 22, 1887.—Before his Honour Judge Stonor.

Reported *ESTATES GAZETTE*, Vol. xxx., p. 422.

First and original introduction—Continuous or original negotiations.

The plaintiff was an auctioneer and house agent at Bayswater, and the defendant a member of the firm of Messrs. W. H. Robinson and Son, solicitors. The action was brought to recover the sum of £7 10s., commission due to the plaintiffs for letting the defendant's house, No. 7, Gloucester Place, Hyde Park, to a Mrs.

18 COMPENDIUM OF COMMISSION CASES.

Simpson, at £150 a year, on a three years' agreement. The plaintiff and his clerk proved the introductions and negotiations, which the defendant did not dispute, but contended that the tenant having gone out of town in October and not having entered into further negotiations until the following March, had virtually abandoned the idea of taking the house, and that the fact of her having subsequently taken it was owing to the efforts of Messrs. Towers, Williamson and Ellis, another firm, who alone were entitled to commission. In reply to this it was urged that Mrs. Simpson had not given up the idea of taking this house in especial, but all houses in general, and that her desire for this house, latent during the winter, had revived in the spring, and that she remembered it from the time she first saw it with the plaintiff's order to view. "*Green v. Bartlett*," "*Bailey v. Chadwick*," and "*Giddy and Turner v. Ayerst*," were cited in support of the view that under the circumstances the plaintiff was entitled to recover, and the learned judge in the result came to the conclusion that the case was the same in principle as that of "*Green v. Bartlett*." There had been a conflict of evidence as to the plaintiff's communication with the tenant, but there was no evidence that he acted otherwise than by the instructions of the defendant. He therefore gave judgment for the plaintiff.

Mr. Clarence Eiloart was solicitor for the plaintiff, and Mr. Mansell Hopkins counsel for the defendant.

Oetzmann and Co. v. Emmott.

Queen's Bench Division, October 22, 1887.—Before Mr. Justice A. L. Smith and a Common Jury.

Reported *ESTATES GAZETTE*, Vol. xxx., p. 595.

An agent must look to his real employer—Suing the wrong party.

This was an action brought by Messrs. Oetzmann and Co., of Hampstead Road, to recover commission amounting to £62 10s., for introducing a purchaser for a house. The house in question, Elm Bank, Hornsey Lane, was the property of a gentleman named Ferguson, who died in August, 1886, and it was in June, 1885, placed upon the plaintiff's books for sale, at the price of £4,000, by the defendant, Miss Emmott, who was the sister of Mr. Ferguson's deceased wife, and managed his house for him. It appeared that the plaintiffs in the first instance looked to Miss Emmott as the owner, and in some correspondence she referred to the house as

"ours"; but in October, 1885, they came into communication with Mr. Ferguson, and subsequently corresponded with him about the house. In June, 1886, a Mr. Marriott, who subsequently became the purchaser, obtained from the plaintiffs an order to view the house. The order was addressed to Mr. Ferguson. Mr. Marriott, who resided in the country, did not then inspect the house, but on his visiting London in the September following the plaintiffs again mentioned the property to him. According to his evidence, Mr. Marriott then went to Hornsey on September 23, and called at the office of Messrs. Rouch and Parkhouse, house agents there, where he inquired his way to Elm Bank. The clerk told him that the property was in the hands of their firm, and that Messrs. Oetzmann and Co. had nothing to do with it, and then accompanied him to the house. Mr. Marriott stated expressly that it was in consequence of the plaintiffs' introduction that he went to look at the house. This account, however, was contradicted by the clerk, who said that Mr. Marriott came and inquired after a house, and it was only when Elm Bank had been mentioned to him that he referred to the plaintiffs' order. On September 24 Mr. Marriott agreed to purchase the house for £2,500. It was admitted that the subsequent negotiations were carried out through Messrs. Rouch and Parkhouse, who were ultimately paid commission on the purchase by Mr. Ferguson's executors. The defence put forward on these facts was—(1) that the plaintiffs had been employed by and looked for their commission to Mr. Ferguson; and (2) that they had not effected any such introduction as would entitle them to commission, and on both points the jury found for the defendant.

Counsel for the plaintiffs: Mr. Henn Collins, Q.C., and Mr. T. W. Chitty; counsel for the defendant: Mr. Rolland.

Fuller and others v. Bull.

Croydon County Court, November 8, 1887.—Before his Honour Judge Lushington.

Reported ESTATES GAZETTE, Vol. xxx., p. 620.

Property put up to auction, but afterwards sold by private contract—Vendor liable for commission, though sale finally completed by him in person.

The defendant, who was a builder, was the owner of certain premises, Nos. 86, 87, 88, and 89, Gloucester Road, and other property. The property was put into

20 COMPENDIUM OF COMMISSION CASES.

the hands of Messrs. Fuller, Moon and Fuller, auctioneers, of Croydon, and the sale was fixed for a date in March, but afterwards postponed. In the meantime a person named Parris called at the office of the plaintiffs and obtained a copy of the particulars of sale. He afterwards viewed the property, and made an offer, which was not accepted. On April 14 Parris and others attended the sale, but as the reserve price was not reached the attempt to sell proved abortive. It was stated on behalf of the plaintiffs that it was the custom of auctioneers after an unsuccessful sale to endeavour to dispose of the property by private contract; and after the auction the defendant instructed the plaintiffs to sell by private contract if possible. Considerable negotiations took place between the auctioneers and Parris, who refused to give £1,550, but eventually made an offer of £1,200, which he said was his ultimatum, and in the end he bought the property of the defendant for £1,200. The plaintiffs now claimed commission on that sale. The defendant did not deny that the property was put up by the plaintiffs for sale by auction, but distinctly denied subsequent instructions to sell by private contract, or that Mr. Parris was in any way led to this purchase through the agency of the plaintiffs. Evidence of custom was adduced to show that when an auctioneer supplied the first information to a purchaser the charge of commission was properly made, even though, as in this case, the sale was finally completed by the vendor.

At the conclusion of the evidence the learned judge said that he had no difficulty in deciding that the instructions to sell by private treaty were given, and gave judgment for the plaintiff for £30.

Mr. Laxton appeared for the plaintiffs, and Mr. A. C. Edwards for the defendant.

Jolly v. Carter.

Lord Mayor's Court, December 13, 1887.—Before the Assistant Judge and a Jury.

Reported *ESTATES GAZETTE*, Vol. xxx., p. 668.

Rate of commission upon private sale—Charges printed on auctioneers' paper.

The plaintiff, Mr. Frank Jolly, an auctioneer, carrying on business as F. Jolly and Co., at 66, Leadenhall

Street, claimed from the defendant £20 10s., commission at the rate of $2\frac{1}{2}$ per cent. on £820, the amount of the purchase-money of some houses in Hertford Street, Mile End Road, which she had advertised for sale in the daily papers. The plaintiff's clerk called upon her, and obtained from her particulars of them, and the price at which she was willing to sell them. She agreed to pay him commission if he effected a sale; but refused to sign a paper which was shown to her, and denied that she knew anything about $2\frac{1}{2}$ per cent. being his charge, although it appeared that that was the commission printed upon the paper. Some time afterwards a Mrs. Capel called on the plaintiff about purchasing some other property, which had, however, been disposed of, and the plaintiff gave her a card to view the defendant's houses. She went to see them, and was at first indisposed to buy them, but after a conversation with an agent named Waite she ultimately bought them for £820, with a free conveyance. The plaintiff had advertised the houses, entered them in his books, and had given 49 cards to intending purchasers to view the property, but the defendant had paid £5 to Waite for selling the property, and declined to pay the plaintiff.

The plaintiff deposed that $2\frac{1}{2}$ per cent. was the usual charge on sums under £2,000, though sometimes 5 per cent. additional was charged on the first £100. He never knew an instance where a respectable auctioneer charged less than $2\frac{1}{2}$ per cent. Asked to look at a letter from another estate agent, in which $1\frac{1}{2}$ per cent. was mentioned, he said that was for sale by public auction. It was not a fair percentage for a sale by private treaty, and $2\frac{1}{2}$ per cent. was as little as any respectable auctioneer could be expected to work for.

In summing up the learned judge explained to the jury the law as to direct and indirect introductions, and on the question of the amount of commission said that though they might take it that some auctioneers would accept less than $2\frac{1}{2}$ per cent., they must say whether that was a reasonable sum.

The jury found a verdict for the plaintiff for £20, being $2\frac{1}{2}$ per cent. on £800, taking £20 off the purchase-money as the cost of the conveyance, and judgment was entered for that amount.

Counsel for the plaintiff: Mr. Wildey Wright; counsel for the defendant: Mr. Torr.

Belton and Son v. Burrows.

Queen's Bench Division, April 23, 1885.—Before Lord Chief Justice Coleridge and a Special Jury.

Reported ESTATES GAZETTE, Vol. xxviii., p. 147.

Alternative claim—Alleged revocation of authority.

The plaintiffs here sued to recover £187 10s. for commission due from the defendant on the sale of a public-house, or alternatively upon a *quantum meruit*.

The plaintiffs were public-house brokers carrying on business in Hatton Garden, and the defendant in February, 1884, was the owner of a public-house in the King's Road, Chelsea, known as the "Man in the Moon." The defendant had only bought the house in December, 1883, when he had paid £7,750 for it, but he had instructed the plaintiffs, in February, 1884, to sell it for him if they could find a purchaser at the same price. As it was found out that they could not sell it by private treaty, he asked them in May to put it up for sale by auction, and they advertised the sale towards the end of that month. The sale did not take place, as the defendant asked that it should be withdrawn. He wrote to the plaintiffs on June 3, and expressed his willingness to sell it to any purchaser who might come to them and make a proper offer for it. On June 6, 1884, however, he sold it through another broker to a Mr. Videon for £7,500, and it was on this sum that the plaintiffs now claimed a commission of 2½ per cent. Their case was that they had first mentioned the property to Mr. Videon and that the broker through whom the actual purchase had been made had gained his information from the advertisement which they had inserted when intending to sell the property by auction. The defence to the action was that the authority given by the defendant to the plaintiffs had been revoked, and that at the time of the sale to Mr. Videon they had ceased to act for him. He paid a sum of £10 19s. into Court for the expenses to which the plaintiffs had been put in advertising the house, etc., and £10 10s. for their work.

In the result the jury after deliberating a short time found a verdict for the plaintiffs for £15 15s. beyond the amount paid into Court, and judgment was given accordingly.

Counsel for the plaintiffs: Mr. R. T. Reid, Q.C., and

Mr. Haigh ; counsel for the defendant : Mr. Gainsford
Bruce, Q.C., and Mr. Winch.

Houghton v. Orgar.

Reading County Court, July 16, 1885.—Before his Honour
Judge Vernon Lushington.

Reported ESTATES GAZETTE, Vol. xxviii., p. 293.

*Revocation of authority by lapse of reasonable time—Right to
commission gone.*

The plaintiff in this case was an auctioneer in Reading, and the defendant an hotel keeper at Chislehurst. The defendant formerly kept the White Hart, Maidenhead, and the plaintiff was suing him for services and advertising in connection with its disposal. The plaintiff had the letting of the White Hart Hotel in 1881, and found a customer, who forfeited £100. On the plaintiff paying over to the defendant £65, the remainder was left in the plaintiff's hands for the expenses, and the defendant signed a new agreement dated February 15, 1883, to employ the plaintiff to dispose of the hotel and pay him 5 per cent. commission if he disposed of it. The plaintiff was unable to find a customer down to September 22, 1884. In the meantime a number of letters had passed between the parties. On September 22, 1884, the defendant wrote to the plaintiff to send in his bill for advertising, but he did not tell him he had sold the hotel, and it was not till March, 1885, that he found out that the defendant had disposed of it. The plaintiff also sent in his bill for advertising, and had no reply. The learned judge held that the September letter of the defendant practically informed the plaintiff that the contract was at an end. The question was whether on September 22 reasonable time for the plaintiff to dispose of the property had run out. The agreement was a very onerous one for the defendant, and no tribunal would enforce it harshly against him. Looking at the circumstances that the house had been in Mr. Houghton's hands since 1881, and that upwards of eighteen months had passed since the signing of the new agreement (although hotel property was depressed during that period), he thought that a reasonable time had run out on September 22, and that there was no other obligation under that contract on the part of the

24 COMPENDIUM OF COMMISSION CASES.

defendant. He therefore held that the plaintiff's claim for commission amounting to £41 11s. 9d. could not be maintained. This decision was afterwards affirmed by Lord Chief Justice Coleridge and Mr. Justice Grove in the Queen's Bench Division.

Counsel for the plaintiff: Mr. W. A. Pocock; counsel for the defendant: Mr. Haigh.

Lawrence v. Hudson.

Lord Mayor's Court, August 26, 1885.—Before Sir W. T. Charley, Q.C., and a Jury.

Reported *ESTATES GAZETTE*, Vol. xxviii., p. 364.

Commission payable on signing agreement—Insolvent purchaser.

This action was brought by the plaintiff to recover from the defendant £22 10s. commission, under an agreement for introducing a purchaser of some building plots at Tottenham.

The plaintiff's case was that whilst travelling in a railway train with the defendant's partner, named Baker, the latter stated that they had 15 plots of land which they either wanted to sell or would let on a 99 years' lease, and would pay the plaintiff 2½ per cent. if an agreement was entered into. An agreement was entered into with a man named Sheffield, who built five houses, but did not enter upon the remaining ten plots. Sheffield having got into difficulties the defendants foreclosed, and took possession of everything; and the plaintiff considered that he had done all that he was bound to do under the agreement, and that the defendants having agreed with Sheffield for the building of the houses, he was entitled to the agreed percentage upon the whole of the 15 lots, reckoned on a 20 years' purchase, although only five had been entered upon.

The defence was that no such agreement was come to, that the agreement was to pay 2½ per cent., providing only that a man of substance was introduced, and not a person like Sheffield. Defendants paid £7 10s. into Court, because they considered there might be a legal right on the part of the plaintiff to 2½ per cent. on the £3 a year ground rent of each of the five houses which Sheffield commenced, but which they had to finish at their own expense. With reference to the agreement, which plaintiff alleged was subsequently reduced to writing, defendant denied having seen it, and in conse-

quence of the other ten plots, above the five which had been started by Sheffield, not having been touched, not even a sod having been turned, they did not consider themselves liable to pay anything upon them.

The learned judge, in summing up, told the jury the question was whether the commission was payable on the signing of the agreement or when the whole of the land was covered with houses, and ultimately they found for the plaintiff for the amount claimed (£22) above the £7 10s. paid into Court.

Mr. Sims appeared for the plaintiff; Mr. Lewis for the defendant.

De Jersey v. Mobbs.

Lord Mayor's Court, October 6, 1885.—Before Sir Thomas Chambers, Q.C., Recorder, and a Jury.

Reported ESTATES GAZETTE, Vol. xxviii., p. 436.

Principal unable to make a title—Agent entitled to commission—Solicitor signing commission note.

The plaintiffs in this case, Messrs. De Jersey and Preston, the mortgage brokers, sued the defendant, Mr. Joshua Mobbs, to recover the sum of £20 commission, which they alleged they had earned in procuring a loan of £500 upon certain property said to belong to the defendant, in Nile Street, Hoxton.

Mr. De Jersey deposed that Mr. Faithful, a solicitor, who was acting for the defendant, called upon him and asked if a loan of £500 could be procured upon a mortgage on certain property in Nile Street, Hoxton. The title of the defendant was represented to be good, as he had just succeeded in an action in the Chancery Division in which the question was raised. Upon investigation, however, it was discovered that the title of the defendant was not good, as he had not been in undisturbed possession since 1856, when the last holder died, and because a claimant to the property had come forward in the person of the heir-at-law of the last holder. Moreover, the defendant had only been in possession for two years, and had already been deprived of a portion of the property of the estate. Under these circumstances, the plaintiffs could not induce their client to complete the loan.

Mr. Coulson, an estate and reversion agent, said he was ready and willing to advance £500 upon the pro-

perty, at an interest of £4 per week, as it was only a temporary loan, if the title had been good. The defendant, however, did not have such a title as would justify him in advancing £500.

For the defence, Mr. Faithful, Mobbs's solicitor, said that he did not have the authority of the defendant to sign any commission note. When he saw the plaintiff he told him the security was bad, and that, in fact, the defendant had no title. The property had been taken all over the city for sale or to raise a loan, without success. It was, in fact, a "white elephant" to the defendant, and he told the plaintiffs so.

The jury, however, believed the evidence of the plaintiffs, and found in their favour for the amount claimed.

Counsel for the plaintiffs: Mr. Lewis Glyn; counsel for the defendant: Mr. Groom.

Griffin and Son v. Cheesewright.

Queen's Bench Division, November 20, 1885.—Before Mr. Baron Huddleston and Mr. Justice A. L. Smith.

Reported ESTATES GAZETTE, Vol. xxviii., p. 508.

*An authority to let not a general authority to find a purchaser—
Principal not precluded from dealing directly with purchaser.*

In this case the plaintiffs were house agents at Ealing, and the defendant was the owner of the lease of a house there named Eaton Villa, Castlebar Hill, which he had instructed them to let for him on a three years' agreement at £75 a year. Mr. Griffin, senior, had admittedly only received instructions from the defendant to let, but his son gave evidence at the County Court that he had been authorised by him a short time afterwards to sell the lease for £1,200. In the plaintiffs' books the original entry relating to the house had been altered by the addition of the words "£1,200, ground-rent £11." The plaintiffs gave an order to view the house to Miss Thompson, but she was told nothing by them about the price at which the defendant was willing to sell the remainder of his lease, which had some 75 years to run. Miss Thompson's father went to see the house, where he found a card showing that the defendant was the owner of it, and in the result the defendant sold the lease to Mr. Thompson for £1,100, but had only paid to the plaintiffs the commission to which they would have been entitled if they had found a tenant

on a three years' agreement. At the close of the plaintiffs' case the learned County Court judge, on being asked to non-suit them, refused to do so, and the defendant then swore that he had never instructed Mr. Griffin, junior, to sell the lease. This point of the instructions to Mr. Griffin, junior, was the chief one in the case, and the following questions were left to the jury:—(1) Did the defendant tell the son that he was willing to sell the house; and (2) if so, did he do it with the view of authorising the sale by the plaintiffs? The jury having answered them in the negative, judgment was given for the defendant. On appeal to the High Court of Justice it was submitted on behalf of the plaintiffs that the learned judge had misdirected the jury, and should have left it to them to say whether the defendant had not given the plaintiffs general instructions to sell. It was also urged that the defendant had availed himself of the benefit of the services of the plaintiffs, and had recognised and adopted them. The Court, however, considered that it could not be contended that a man by telling a house agent to let a house for him thereby prevented himself from finding a purchaser for it; that the County Court judge's duty had only been to direct the jury on the case made out before him, and not on that—as to an implied authority having been given to the plaintiffs—which had not been set up. The plaintiffs had relied upon proving an express contract having been made between Mr. Griffin, junior, and the defendant, by which they (plaintiffs) had been directly authorised to find a purchaser for the lease. The jury having found that no such contract had been made the defendant was entitled to judgment.

The appeal was accordingly dismissed, with costs.

Counsel for the plaintiffs: Mr. McDonell; counsel for the defendant: Mr. Cooper Wyld.

Lumley v. Nicholson.

Queen's Bench Division, November 27, 1885.—Before Lord Chief Justice Coleridge and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. xxviii., p. 520, and Vol. xxix., p. 328.

An introduction must be the efficient and not the remote cause of sale—Whether it was so or not is a question of fact for a jury.

This was an action by Messrs. Lumley against a gentleman, to recover commission on the sale of land,

portion of an estate belonging to him, which had been sold, as they alleged, by their agency or instrumentality for £19,000, and for which they claimed commission upon their usual scale to the amount of £285.

It appeared that the defendant was the owner of an estate near Strood, Kent, called Hoo Lodge and Hoo Farm, which he desired to sell, and in August, 1881, he applied, to the plaintiffs, Messrs. Lumley, to endeavour to sell it for him. They accordingly placed it on their books, showing him their terms printed, which were these:—Commission is chargeable on sale or letting through their instrumentality at the rate of 5 per cent. on the first £1,000, 2½ per cent. up to £5,000, and 1½ per cent. on the residue, with the usual commission on the amount paid for timber, tillage, etc. A Mr. Armitage heard of the estate through the plaintiffs, and negotiations took place with him as to the purchase of it. The estate was valued by the owner altogether at £37,000, but was divided into lots, some of the smaller of which had already been sold, leaving lots 3, 4, 9, and 10, of which the first three (3, 4, and 9, including the residential part) were valued at about £15,000. These Mr. Armitage purchased in October, and the plaintiffs had their commission. After this the plaintiffs and Mr. Armitage were in communication up to March, 1882, and in April the defendant withdrew the estate from their books, but they gave him notice that they should claim their commission if Mr. Armitage should purchase the rest of the estate. In 1884 they found that Mr. Armitage had purchased of the defendant the rest of the estate, lot 10, for £19,000, and they then claimed their commission upon it; but the defendant disputed their claim, and refused their proposal to leave the matter to arbitration, the consequence of which was this action. The plaintiffs' case was put thus:—That the sale of the whole was effected through their instrumentality, and that the withdrawal of their authority after the introduction was immaterial.

The defence raised, however, was that the commission was not due on the second transaction, as the original introduction was not the efficient cause of it. Upon this the Lord Chief Justice observed that it was a question for the jury whether the plaintiffs' agency was the real cause of the second sale, and Mr. Lumley in cross-examination admitted that Mr. Armitage had never made him an offer for the rest of the estate, but

declared that he had spoken of his intention ultimately to purchase the rest, and that it had been offered to him and spoken of between them before the withdrawal of the authority.

Mr. Armitage on the other hand stated that Messrs. Lumley had introduced him to the estate, and he had purchased part of it, but he did not remember ever saying to Mr. Lumley that he intended to purchase the rest, for he was quite satisfied with what he had purchased. He had only looked over the part he had purchased, and not looked over the rest until two years afterwards, nor had he made up his mind to purchase more until some time afterwards.

In summing up, Lord Coleridge said that the rule on which the agent was entitled to his commission was simple enough, and the difficulty was only in the application of it. The rule was that to entitle the agent to his commission it must appear that the sale was brought about by his act—that is, his act must have been the real and efficient cause of the sale; and it would be for the jury to say whether they were satisfied that the second sale in this case was brought about by the act of the plaintiffs. It was stated by the plaintiff, Mr. Lumley, that he had offered the whole estate to Mr. Armitage, who, however, said he could not command the money for the purchase of the whole at that time, but that it was his intention ultimately to purchase the whole. Mr. Armitage, who was an entirely independent witness, did not remember this, and said that he had not made up his mind to purchase the rest of the estate until long afterwards. Even if it had been in his mind at the time, yet if the jury thought there was a complete separation between the purchases, and the purchaser had dismissed the matter from his mind, and had only resolved to make the second purchase long afterwards, they probably would not consider that the second sale was brought about by the plaintiff, and, if so, they would find their verdict for the defendant.

The jury, after a short consultation, found for the defendant, and judgment was given accordingly. A new trial was subsequently refused in the Divisional Court by Mr. Justice Manisty and Mr. Justice Hawkins. Counsel for the plaintiffs: Mr. Channell, Q.C., and Mr. Cope; counsel for the defendant: Mr. Henn Collins, Q.C., and Mr. Moseley.

Houghton v. Scott.

Queen's Bench Division, November 20, 1885.—Before Mr.
Justice Day.

Reported ESTATES GAZETTE, Vol. xxiii., p. 514.

*Agents only the remote cause of a sale—A negotiation broken off
and a fresh one entered into.*

This was an action by Messrs. Houghton, a firm of auctioneers, to recover commission from the defendant for introducing a purchaser for a residence belonging to him known as The Knowle, Walthamstow, which he had instructed them to sell by private treaty. Messrs. Houghton induced the purchaser, Mr. Bellingham, to view the property in spite of a very strong prejudice the gentleman had against the neighbourhood of Walthamstow. He afterwards applied to them by letter for a second order to view, and appeared pleased with the property, but said he would not care to purchase, although he was disposed to rent. A suggestion was submitted to the owner by Messrs. Houghton, which was declined. Mr. Bellingham subsequently called on Messrs. Debenham, Tewson, Farmer and Bridgewater, who had a notice board on the property, when The Knowle was again introduced to his notice. Mr. Bellingham said he had already seen the house, but was induced by Messrs. Debenham and Co. to view it again with their order, certain repairs having been recently effected. Messrs. Houghton having heard that Mr. Bellingham was in treaty with Messrs. Debenham and Co., wrote at once to the defendant to say that in the event of a sale being completed with Mr. Bellingham, they would expect to have their services recognised in the matter, having been the first to introduce the property to Mr. Bellingham. Mr. Scott thereupon denied all liability to pay them commission. Messrs. Houghton offered to submit the question to arbitration, which Mr. Scott also declined. The residence was eventually purchased by Mr. Bellingham, and the present action commenced against the owner by Messrs. Houghton. Several witnesses were called in support of the plaintiff's case, but Mr. Justice Day, in the course of his judgment, said that though undoubtedly Messrs. Houghton did first of all, with considerable tact and judgment, break through Mr. Bellingham's prejudice against the neigh-

bourhood and induce him to view the property, yet as that negotiation was abortive, and a fresh one entered into with Messrs. Debenham and Co., he must find for the defendant. The plaintiffs were not, in his opinion, the efficient cause of the sale.

Bray v. Dalglish.

Lord Mayor's Court, December 14, 1885.—Before the Assistant Judge and a Jury.

Reported ESTATES GAZETTE, Vol. xxviii., p. 545.

Introduction of a partner—Commission not claimable from both sides except by agreement.

The plaintiff was an auctioneer, carrying on business at 50, Holloway Road, and he sued the defendant, a wine and spirit merchant in Queen Street, Cheapside, and Leicester Square, to recover the sum of £10, commission for introducing a partner. The plaintiff stated that he was consulted by Mr. J. H. Barker, part proprietor of the Golden Fleece Tavern, Queen Street, Cheapside, about getting a partner with a capital of £600. He accordingly inserted an advertisement in various papers, which brought him into communication with the defendant, to whom he divulged the name of his principal. Mr. Barker and the defendant ultimately entered into partnership, and the plaintiff got £5 from the former gentleman, but had not received anything from the defendant, though his terms were expressly that he should receive commission from both sides. He alleged that the defendant had agreed to these terms, and had written a letter promising payment; but the defendant positively denied that commission was ever mentioned to him, or that he had written a letter promising to pay. He had known Mr. Barker for years before the plaintiff mentioned his name to him.

Mr. Barker having given evidence to the effect that he had paid the plaintiff £5 for his trouble and outlay, the learned judge told the jury that the introducer of a prospective partner in any business could not claim commission from both sides unless there was a specific agreement to that effect, and they found for the defendant.

Counsel for the plaintiff: Mr. Glyn; counsel for the defendant: Mr. Wildey Wright.

Bacon v. Fielding.

Lord Mayor's Court, July 5, 1886.—Before Sir Thomas Chambers, Q.C., and a Jury.

Reported ESTATES GAZETTE, Vol. xxix., p. 329. .

Commission recoverable where sale falls through owing to vendor's inability to make a title.

The plaintiff, an estate agent, carrying on business at 25, Liverpool Street, London, sought to recover £16 2s. 6d. for commission at $2\frac{1}{2}$ per cent. on an agreed amount of purchase-money. The correspondence showed that the defendant had instructed plaintiff to endeavour to sell for him certain houses of which he was the leaseholder, 11, 12 and 18, Moorfield Street, Borough. The plaintiff accepted the defendant's instructions, and gave him his terms, viz., $2\frac{1}{2}$ per cent. commission for effecting sales; no sale no charge. Defendant said the amount he required for the property was £700. He stated that the property was mortgaged, and mentioned the amount of the ground rent, but gave no other particulars. The plaintiff made inquiries, and several letters passed, in which the plaintiff said he had an offer of £550. Defendant said he would not take less than £660, and a meeting subsequently took place between him and the proposed purchaser, Mrs. Hymore, at which the defendant agreed to accept £650. It afterwards appeared that the amount of ground rent was one guinea more than he had stated, and Mrs. Hymore claimed a reduction, but agreed to give £645. On plaintiff's advice, defendant consented to accept it. Plaintiff accordingly signed a contract for sale at that price, and Mrs. Hymore paid a deposit of £20. A few days after the contract was signed a letter was received from the Impartial Benefit Building Society informing the plaintiff that the property was mortgaged to them, that they had taken possession, of which the defendant had due notice, and that they were collecting the rents and refused to allow the property to be conveyed. Plaintiff had therefore to return to Mrs. Hymore the deposit of £20.

On behalf of the defendant it was maintained that as there was "no sale" no commission was earned, but the learned judge dissented, observing that there was "no sale" by defendant's own fault.

The defendant was called, and said he never agreed

to accept less than £660, and never authorised the plaintiff to accept less, but he admitted having received the contract of sale for £645, and sending it on to the mortgagees, and the learned judge having expressed an opinion that no one would believe after that that the defendant did not agree to accept £645, the jury returned a verdict for the full amount claimed.

Counsel for the plaintiff: Mr. Lewis Glyn; counsel for the defendant: Mr. Morton Daniel.

Pinchbeck v. Wootton.

Queen's Bench Division, July 9, 1886.—Before Mr. Justice Wills and Mr. Justice Grantham.

Reported *ESTATES GAZETTE*, Vol. xxix., p. 352.

Interpretation of agreement—Disputed custom of the profession.

The facts of this case were as follows:—The plaintiff, an architect and surveyor, of Sutton, claimed £31 5s., commission at 2½ per cent. on £1,250, the amount of purchase-money for a pair of freehold shops in Haddon Terrace, High Street, Sutton. The defendant, in the year 1883, built four houses in Haddon Terrace, Sutton, Nos. 1, 2, 3, 4, and wrote to the plaintiff offering him 2½ commission if he (plaintiff) could introduce a purchaser for them. The defendant, in March, 1884, sold the four houses to a customer who was introduced to him by a third party, to whom he paid a commission. In the year 1885 the plaintiff sent a client down to purchase the said houses, Nos. 1 to 4. The client saw defendant, who informed him the houses, Nos. 1 to 4, had been sold, but he (defendant) had built two other houses, Nos. 5 and 6, which he wished to sell, and these the customer eventually purchased. The questions in the case were two, viz.: (1) What interpretation ought to be put upon the agreement, and (2) Whether there was a custom that house agents who had been instructed to sell certain property, and sent down a customer who purchased other property, could charge commission on the sale thus effected. On both these questions the learned judge found against the defendant, and the High Court of Justice declined to interfere with his decision.

Counsel for the plaintiff: Mr. Brown (instructed by Mr. Hird); counsel for the defendant: Mr. Kydd (instructed by Messrs. Jackson, Prince and Douglas).

Rogers and Co. v. Hampden.

Brompton County Court, December 14, 1886.—Before his Honour Judge Stonor.

Reported ESTATES GAZETTE, Vol. xxix., p. 608.

Commission due when principal declines to complete in due course.

In this case Messrs. Rogers, Chapman and Thomas, auctioneers and estate agents, of 78, Gloucester Road, South Kensington, sued the Hon. Captain Hobart Hampden, of No. 12, Hereford Square, for commission on letting his furnished house. The plaintiffs proved that the house was let by them in October, 1885, to a Mr. Murray-Honey, and possession was to be given on November 2 following, an agreement to that effect being duly executed. A few days before the date fixed for giving possession the defendant gave plaintiffs notice that, for certain family reasons, he could not give possession on the day agreed upon, and in consequence of this the proposed tenant made other arrangements, and consequently the agreement was not carried out. The plaintiffs maintained that they had let the house and so earned their commission, but the defendant on the other hand considered the transaction was not fully completed, and that therefore the plaintiffs were not entitled to claim.

His Honour Judge Stonor, in giving judgment for the plaintiffs, said that undoubtedly they had let the house, and were therefore entitled to their commission. A proper agreement having been executed, the defendant had his remedy in an action for specific performance if it was not carried out through any default on the tenant's part, which in this instance was not the case, as Captain Hampden himself was the party withdrawing from the contract.

Inman v. Warr.

Marylebone County Court.—Before his Honour Judge Stonor and a Jury.

Reported ESTATES GAZETTE, Vol. xxxi., p. 46.

Custom of the trade—Auctioneers can charge commission where the property has not been put up, but withdrawn by the vendor.

The plaintiff in this case was Mr. W. N. Inman, of 126, Maida Vale, auctioneer and surveyor, and the de-

fendant was a builder, of No. 2, Hampden Street, Harrow Road. The claim was for £29 5s., commission earned and money paid out of pocket by the plaintiff on the sale of premises in Marlborough Street, Harrow Road.

The plaintiff's case was that the defendant instructed him to include the houses in his next sale by auction, on August 18, 1888, and agreed to pay the usual commission if sold, but only out-of-pocket expenses if not sold. The property was duly advertised for sale on the 18th, but on August 17 the defendant informed plaintiff that he had sold the property privately. Plaintiff then sent in his account, charging commission and money out of pocket, whereupon defendant complained, contending that he was only liable for the payments out of pocket, the amount of which he paid into Court. Witnesses were called to prove these facts, and that there was a custom among auctioneers that commission was chargeable whether the property was sold at the auction or not, but the defendant's case was that it was agreed between the plaintiff and himself that if the property was sold prior to the auction, the plaintiff was only to be entitled to expenses out of pocket.

The learned judge held that the plaintiff was not entitled to commission unless the defendant knew of the alleged custom, and left it to the jury to say, firstly, whether such an agreement as alleged by the defendant was come to; secondly, if no such agreement existed, what amount plaintiff was entitled to for remuneration beyond the money paid into Court for expenses; thirdly, was there a custom in the profession by which auctioneers charged their commission if the property was sold privately or withdrawn, and, if so, was such custom known to the defendant.

The jury found that there was no such agreement as alleged by defendant, and that there was such a custom as stated by the plaintiff, but that such custom was not known to the defendant, and they awarded the plaintiff the sum of £12 as remuneration, in addition to the £10 17s. 6d. paid into Court.

Mr. E. Tolland (instructed by Mr. Scaife) appeared for the plaintiff; and Mr. Pain was solicitor for the defendant.

Jolly v. Sharp.

Lord Mayor's Court, February 9, 1888.—Before the Assistant Judge and a Jury.

Reported ESTATES GAZETTE, Vol. xxix., p. 77.

*Subsequent private purchase by party present at auction—
Commission recoverable.*

This was an action brought by Messrs. Frank Jolly and Co., auctioneers, of Leadenhall Street, against Mr. John Sharp, licensed victualler, of Walthamstow, for commission on the sale of three freehold houses in Field Road, Forest Gate, which were submitted to auction in March, 1887, by the plaintiffs, but were bought in at the reserved price and were sold shortly afterwards by the defendant to a gentleman who, it was not disputed, was present in the auction room at the time of sale.

It appeared that the defendant at first instructed the plaintiffs to sell the property by private treaty, and they thereupon placed the particulars upon their books and in their printed register published monthly. A large number of orders to view were given, but nothing resulted in consequence of the high price asked. After some time the defendant instructed the plaintiffs to include the property in their May sale at the Auction Mart. This was done, but the reserved price not being reached, the property was declared to be bought in. After the sale, negotiations were continued with a view to effect a sale by private treaty, but on June 6, defendant wrote saying the houses were sold. Inquiries were instituted by the plaintiffs, and it was then found that the purchaser had attended the auction sale, whereupon the plaintiffs sent in their account for commission and out-of-pocket expenses.

The defence was that the sale resulted through the instrumentality of a Mr. Nelson, a coffee-house keeper, who was a neighbour of the purchaser, and the latter stated in evidence that Nelson told him two days before the sale that the houses were going up at the Mart. He thereupon went down and inspected them and saw the plaintiffs' bills on the property. In reply to a question by the learned judge, Mr. Jolly stated that the property had been advertised freely for nearly three weeks, and his Lordship pointed out to the jury that therefore the matter was at this time public property, and that the fact of one person telling another of it,

who afterwards became the purchaser, would not prejudice the claim of the auctioneer. A letter was read from the defendant to the plaintiffs' solicitor, in answer to a request for payment, promising to settle the account upon the completion of the purchase, and asking for proceedings to be stayed. This was agreed to, but the completion took place and the defendant then refused to pay. Defendant's counsel stated that the letter only referred to the out-of-pocket expenses, which were paid into Court, but the learned judge pointed out that this could not be, as the account plaintiffs had rendered was referred to in the letter, and after he had summed up, the jury, without retiring, found for the plaintiffs for the full amount claimed for commission and out-of-pocket expenses (£27 15s.), and judgment was entered accordingly.

Counsel for the plaintiffs: Mr. Wildey Wright;
counsel for the defendant: Mr. Moyses.

Day and Co. v. Harris.

Maidstone County Court, February 21, 1883.—Before his Honour Judge Homersham Cox.

Reported ESTATES GAZETTE, Vol. xxxi., p. 106.

*Alternative claim—Commission or damages—Measure of damages
amount of commission due.*

The plaintiffs were Messrs. Day and Co., auctioneers and valuers, of Tonbridge and Tunbridge Wells, and they sued defendant, lately tenant of the Bear Hotel, West Malling, for the commission due to them for acting as agent in introducing to her a purchaser for the hotel, or, in the alternative, damages for breach of agreement to the extent of £20, the equivalent of the commission.

Messrs. Day and Co. having heard that the Bear Hotel was in the market, Mr. Elder, one of the firm, accompanied by Mr. Richardson, a clerk, went to the hotel and saw Mrs. Harris. They ascertained from her that she wanted to leave the hotel in consequence of her husband's death, and Mr. Elder then said it was possible they would get a purchaser, and if they did, might they expect to act as agents for her? Defendant said that other agents had previously acted in reference to the hotel, but if they found a purchaser they might act for her, and showed them over the hotel. Plaintiffs accordingly took the usual steps to obtain a purchaser,

and advertised the hotel in several papers, and on September 21, 1887, Mr. H. F. Selden, who said he had seen the plaintiffs' advertisement, wrote asking for particulars. Plaintiffs sent Mr. Selden particulars, and the latter then wrote asking if the brewer would lend about £150, the ingoing being estimated at £800, and he only being prepared with £650. Plaintiffs replied that they thought they would be able to arrange this, and invited Mr. Selden to see the hotel. He inspected it in company with Mr. Elder, but a week afterwards he wrote to plaintiffs declining to take the house. After that Mrs. Harris herself entered into negotiation with Mr. Selden, and within a fortnight he took possession, and was still carrying on the business. Mr. Elder saw defendant and reminded her of her agreement, but she said that Mr. Selden did not purchase the house through them, and therefore she did not intend to pay plaintiffs any commission.

Mr. Selden gave evidence to the effect that he was tenant of the Bear Hotel. He heard of it first through an advertisement, and it was through that advertisement that he made enquiries about the house. About a fortnight after he had written to plaintiffs to say that he declined to take the house, he saw another advertisement respecting a country hotel, to be let by Mr. J. Hart Bridges, of Bloomsbury Square, London. That turned out to be the same house. In cross-examination the witness said that the cause of his breaking off with plaintiffs was their failure to borrow the money.

After hearing further evidence the learned judge said that there must be judgment for the plaintiffs, with costs. It was by the plaintiffs' exertions and their advertisements that the purchaser was introduced.

Mr. Cripps appeared for the plaintiffs, and Mr. W. S. Norton for the defendant.

Giddy and Turner v. Harper.

Guildford County Court, March 22, 1888.—Before his Honour Judge Lushington.

Reported *ESTATES GAZETTE*, Vol. xxxi., p. 169.

Customary commission on assignment of lease.

In this case Messrs. Giddy and Turner sued Mrs. Harper for the sum of £15 17s. 6d., being commission on letting a house at Hambledon.

It appeared that the defendant held the house on

lease for an unexpired term of nine years, at a rental of £45 per annum, and instructed the plaintiffs to find her a tenant, and to obtain a premium for her lease and improvements of £350. The plaintiffs considered the premium asked was too high, and after some little time the defendant said she would reduce it to £250. The plaintiffs issued a hundred orders to view, and eventually introduced a gentleman, who agreed to take the house and pay the latter sum. In due course plaintiffs sent in their account for the usual commission on assignment of lease—viz., $7\frac{1}{2}$ per cent. on one year's rental and 5 per cent. on the premium. It was also stated that the plaintiffs had brought their terms to the knowledge of the defendant, and that she had signed one of their ordinary forms.

The chief point raised by the defendant was that she had not let the premises nor had she assigned her lease, and that the transaction was a sale and not a letting, but Mr. Turner, in his evidence, explained that the defendant got the superior landlord to cancel her lease and grant a fresh one to her nominee, but that she (the defendant) had received the £250 premium. Two well-known agents were in attendance to prove plaintiffs' charges were customary, but it was not thought necessary to call them.

The learned judge held that the premium was practically increased rent, and that the cancelling of the lease and the granting of a fresh one by the superior landlord was, as far as the plaintiffs were concerned, the same as an assignment, and gave judgment for the plaintiffs.

Mr. Duke appeared for the plaintiffs, and Mr. Davis for the defendant.

Hartley v. Smith and Son.

Halifax County Court, May 2, 1888.—Before his Honour Judge Snagge.

Reported ESTATES GAZETTE, Vol. xxxi., p. 270.

Commission for selling a quarry, or finding a partner with capital—Alleged friendly transaction.

The plaintiff in this action was Samuel Hartley, stone merchant, Lightcliffe, and the defendants were Henry Smith and Sons, stone merchants and quarry owners, Hill Top, Lightcliffe.

The plaintiff had been consulted by the defendants about disposing of their quarry, or finding a partner with capital. An advertisement was drawn up by the plaintiff and the elder defendant, and inserted in the local papers, but nothing came of it. Plaintiff was then requested by defendants to write to various firms he was acquainted with, for the purpose of obtaining a purchaser. Defendants promised that if the quarry was sold at the price they wanted, viz., £3,000, they would give plaintiff £100 commission. Plaintiff paid two visits to London and one to Lancashire, and entered into correspondence with several parties, but without success. Ultimately, however, he introduced Messrs. Whitaker and Son, of Horsforth, near Leeds, to the defendants, and Messrs. Whitaker became the purchasers of the quarry for £2,250. Plaintiff now sued for commission upon the price realised by the sale at the rate agreed upon.

On the part of the defendant it was denied that there had been any agreement between the parties as to commission. Plaintiff and defendants had been on very friendly terms for many years, and what plaintiff had done was done out of friendship. Defendants admitted that on one occasion they told plaintiff that if the quarry sold for £3,000 they would give him £30 or £40; but he was also told that if it did not realise that, they could not afford to give him anything.

The learned judge said it was not denied that plaintiff had acted for defendants in this matter, and whilst it was no doubt true that friendship did exist between them, yet people did not go about the country at their own expense doing work of this kind for friendship simply. In this case there were three witnesses on one side to one on the other; but as the three defendants were all interested in the result, it was not a question of counting heads. He would regard the three defendants as one, and therefore it was oath against oath, and that being so, he thought the probabilities were in favour of the plaintiff's story. He held that plaintiff, who introduced the purchaser to defendants, was entitled to be paid commission at the rate he would have been paid had the £3,000 been realised. He was sorry plaintiff could not have the full amount to which he was entitled by that verdict, owing to the law having limited the jurisdiction of the County Courts to sums of not more than £50. He could therefore only give him £50; but

he would certainly have given him £75 had he had the power to do so.

Verdict for plaintiff for £50 and costs.

Mr. Boocock appeared for the plaintiff, and Mr. Storey for the defendants.

Peacock and another v. Freeman and another.

Supreme Court of Judicature, Court of Appeal, May 12, 1888.—
Before the Master of the Rolls, Lord Justice Lindley and
Lord Justice Bowen.

Reported ESTATES GAZETTE, Vol. xxxi., p. 287.

Auctioneers not entitled to commission where a sale is rescinded owing to vendor failing to comply with requisitions as to title.

The defendants in this case were auctioneers, carrying on business under the name of Aldridge's, in St. Martin's Lane. The plaintiffs were a firm of solicitors who were acting for the mortgagees of a certain property known as the Adam and Eve Yard, High Street, Kensington. In October, 1886, the plaintiffs, acting on behalf of the mortgagees, were desirous of putting the property up for sale. Accordingly, upon October 13, 1886, the plaintiffs wrote to the defendants: "We are desirous of instructing you to sell this property. Will you let us know what will be your commission if the property is sold and if bought in?" On October 21, 1886, the defendants wrote to the plaintiffs in reply, saying that their commission would be 5 per cent. upon the first £10,000, and 2½ per cent. upon the remainder, the letter concluding thus:—"Should the property not be sold, we shall charge an auction fee of 30 guineas and the cost out-of-pocket for printing and advertising." Upon October 26 the plaintiffs wrote to the defendants:—"In reference to your commission, we are advised that a scale of 1½ per cent. upon the first £10,000 and 1 per cent. upon the residue, plus the out-of-pocket expenses, could be substantiated if attacked, and this amount we are prepared to assent to." Upon October 29 the defendants wrote accepting those terms. The property was accordingly put up for sale by auction upon November 23, 1886, and was knocked down to a Mr. Hetherington, a substantial purchaser, for £16,500, and he paid the usual deposit to the auctioneers. Subsequently, however, Mr. Hetherington made some requisitions as to the title of the vendors which they were unwilling or unable to

comply with, and thereupon, in accordance with the conditions, rescinded the contract of sale and repaid the deposit to Mr. Hetherington. The plaintiffs, as their solicitors, then demanded from the defendants the repayment of the deposit which had been lodged in their hands, but the latter claimed to retain out of it the amount of their commission on the sale of the property. The plaintiffs, on the other hand, insisted that they were only entitled to 30 guineas, and brought the present action to recover £208 10s., the difference between the two sums. Mr. Justice Mathew had found in their favour at the trial, and the Court of Appeal, without calling on the plaintiffs' counsel, now affirmed his decision.

The two arguments urged on behalf of the auctioneers were, first, that the property should be considered to have been sold directly it had been knocked down to a solvent purchaser, and secondly, that the plaintiffs had rescinded the contract either from inability or unwillingness to complete, the defendants in either case being entitled on a *quantum meruit* to an equivalent to the commission in the shape of damages for having been prevented from earning it. On the first of these points the Court asked the question, "What is the common sense construction of the phrase 'if the property is sold'?" Clearly it means if the sale is completed and the whole of the purchase-money paid over. The sale here was abortive." "To suppose," observed Lord Justice Lindley, "that the vendors intended to take upon themselves the obligation to pay a large sum for commission whether the property was sold or not, seems to me perfectly incredible." With regard to the second question it was held that the defendants could only be entitled to damages on a *quantum meruit* if the plaintiffs had not only rescinded the sale, but rescinded it wrongfully. But they had only acted in strict accordance with the terms of the conditions of sale, and, as a matter of fact, it was really not they, but Mr. Hetherington, who had refused to complete, a course he was perfectly justified in taking, and one which the difficulties placed by the present state of the law of real property in this country in the way of "making a title" often forces upon a would-be purchaser, or his advisers. Taking this view, the Court of Appeal was clear in the opinion that the well-known authority of "*Prickett v. Badger*" was applicable to the case under consideration.

Counsel for the plaintiffs: Mr. R. S. Wright and Mr. Asquith; counsel for the defendants: Mr. W. Willis, Q.C., and Mr. Lee Roberts.

Barnett v. Isaacson.

Supreme Court of Judicature, Court of Appeal, June 28, 1888.—
Before the Master of the Rolls, Lord Justice Lindley
and Lord Justice Lopes.

Reported ESTATES GAZETTE, Vol. xxxi., pp. 248, 353 and 384.
Alternative claim on an agreement for commission, or on a quantum meruit—A party introduced to a vendor must be introduced in the capacity of purchaser, or commission cannot be claimed.

This was an action to recover £5,000 commission from the defendant on the sale of the business of Madame Elise, in Regent Street. The plaintiff's claim was based upon a letter written by the defendant to the plaintiff in May, 1880:—"In the event of your introducing to me a purchaser of the business, I undertake to pay you a commission of £5,000." The plaintiff subsequently, in December, 1880, introduced Mr. Chatteris, as representing the firm of Messrs. Chatteris, Nichols and Co., accountants, to find a purchaser, and the defendant gave him an undertaking to pay a commission of £5,000 if he found a purchaser. Mr. Chatteris some time afterwards, having in the meantime been employed to audit the accounts of the business, negotiated with the defendant to purchase the business himself. A correspondence ensued between the plaintiff and the defendant as to some remuneration being paid to the plaintiff in the event of Chatteris finding a purchaser, and certain sums were mentioned on both sides, but nothing was settled. Eventually, in January, 1884, Chatteris purchased the business, deducting from the purchase-money the £5,000 commission. The plaintiff then, after some further correspondence, brought this action to recover the £5,000 commission, alleging that he had introduced Mr. Chatteris, the purchaser. The action was tried before the Lord Chief Justice and a special jury, when the jury found for the plaintiff for £2,000 upon a *quantum meruit* for his work and trouble in the matter. The Lord Chief Justice left either party to move the Court for judgment. The plaintiff accordingly moved for judgment for £5,000, or, in the alternative, for £2,000, and the defendant also moved for judgment. The Divisional Court, consisting of Mr.

Baron Huddleston and Mr. Justice Charles, held that under the commission note of May, 1880, the plaintiff was not entitled to the £5,000, as Chatteris was not introduced by the plaintiff as a purchaser; and ordered a new trial upon the question of the *quantum meruit*. The plaintiff and defendant both appealed from this judgment, and the Court of Appeal dismissed the appeal of the plaintiff, and entered judgment for the defendant.

The Master of the Rolls said that the claim as to the £5,000 depended upon the true construction of the letter of May, 1880, which contained the terms of the contract. The letter must be read in its ordinary meaning, having regard to the subject matter with which it dealt. Read in that way, the true meaning was that, in the event of the plaintiff introducing a purchaser of the business, he was to be paid £5,000. The person introduced must become a purchaser through the plaintiff's introduction. The question was, did the plaintiff introduce a person so that by that introduction he had brought about the relation of vendor and purchaser? There was also a further meaning contained in the letter, that if the plaintiff failed to produce that result he was not to be paid anything. He was only to be paid in case of success, no matter what labour and trouble he had devoted to the matter, and that was probably the reason why the commission was so high. The facts here showed that the plaintiff failed to find a purchaser, and so he found another person, an accountant, who might be able to effect what he had failed to do. It was most unlikely that Mr. Chatteris, the accountant, would become a purchaser, and the plaintiff never dreamt when he introduced him that he would become a purchaser. What had happened between the plaintiff and Chatteris, whether the plaintiff had made any claim against Chatteris, did not appear. Having introduced Chatteris, the plaintiff seemed to have done nothing more. Therefore the plaintiff did not introduce Chatteris and thereby bring about the relation of vendor and purchaser, and there was no evidence to go to the jury upon that claim. The Lord Chief Justice, in order to avoid a new trial if possible, though with very great doubt, left it to the jury to say whether the plaintiff was entitled to anything upon a *quantum meruit* for his services. The Lord Chief Justice's real opinion seemed to be against leaving that to the jury, and his Lordship agreed with him. It was impossible

to leave it to the jury, as it would be contrary to the terms of the contract. All that the plaintiff did under the contract was done upon the terms that he was not to be paid unless he was successful. The jury gave him £2,000, though he had failed, and so the verdict could not stand. Then it was urged that though the plaintiff was not entitled to be paid for anything done under the original contract, yet he was entitled to something for services rendered in introducing Chatteris to the defendant. That contention was not urged at the trial, and, indeed, seemed to have been started here. In his opinion there was no evidence to justify a jury in finding for the plaintiff upon this point. It was not said that there was any request by the defendant to the plaintiff to introduce Chatteris to him. It was, however, said that the plaintiff introduced Chatteris to the defendant, and the defendant accepted that introduction, and must pay for that service. To entitle a plaintiff to sue upon a *quantum meruit* the rule was that if the plaintiff relied upon the acceptance by the defendant of something he had done, he must have done it under circumstances which led the defendant to know that if he, the defendant, accepted what had been done, it was on the terms that he must pay for it. The acceptance of the introduction here did not take place under such circumstances that the defendant must pay for it. Neither party ever thought that it was to be paid for. If payment was to have been made for it, it would be due immediately after the introduction, but the plaintiff never claimed it for six years, and it was never claimed until it was suggested by counsel during the argument of the case. There was, therefore, no evidence at all to go to the jury. There must be no new trial, and judgment must be entered for the defendant with costs.

Counsel for the plaintiff: Mr. Lockwood, Q.C., M.P., and Mr. Morten; counsel for the defendant: Mr. Finlay, Q.C., M.P., and Mr. English Harrison.

Butcher v. Broom.

Dorking County Court, July 25, 1898.—Before his Honour Judge Martineau.

Reported ESTATES GAZETTE, Vol. xxxii., p. 67.

Commission on the sale of a brewery—Evidence of customary charge.

In this case, Mr. Edward Butcher, auctioneer and valuer, of High Street, Dorking, sued Mr. Wallace

Breem, formerly proprietor of the Red Lion Brewery, for £37 10s., amount of commission at $2\frac{1}{2}$ per cent. on £1,500 received by the defendant for the disposal of his brewery to Messrs. Lascelles and Tickner, brewers, of Guildford, whom the plaintiff introduced in his professional capacity to the defendant. The defendant alleged that no promise of a commission had been held out, and he had intimated to the plaintiff that no heavy price would be paid, but that he would receive £5 or £10 as a gratuity if the sale was effected; but the plaintiff emphatically denied that Mr. Breem ever mentioned that he would give him a gratuity instead of a commission, or that he received a retainer from Messrs. Lascelles and Tickner to act on their behalf. Evidence having been given on behalf of the plaintiff, it was urged for the defendant that whilst plaintiff was charging defendant for commission on the valuation of the stock and book debts, etc., he was also receiving eight guineas from Messrs. Lascelles and Tickner for the same work, and it was only this coming to their knowledge that induced the plaintiff to reduce his claim for the sum now sued for. The "gratuity" theory was also put forward, but the learned judge having summed up, the jury, after a short consideration, gave a verdict for the plaintiff for 20 guineas.

Mr. Scott appeared for the plaintiff, and Mr. H. J. Chaldecott for the defendant.

Pothonier v. Seckham and another.

Queen's Bench Division, June 14, 1888.—Before Mr. Baron Pollock and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. xxxi., p. 384, and Vol. xxxii., pp. 51 and 84.

An agent may claim commission from a principal, or in the alternative from the agent of that principal.

This was an action for breach of contract to recover £2,500 commission upon the sale of a brewery.

The plaintiff was a merchant carrying on business in Leadenhall Buildings, and Mr. Seckham the proprietor of a brewery at Northampton, and the other defendant, Mr. R. Smith, a gentleman who represented the first defendant. The case for the plaintiff was that on December 15, 1886, Smith came to his office and asked him to find a purchaser for the brewery. The plaintiff

said he would undertake to do so if the matter was placed exclusively in his hands. The price first asked was £257,000, and the plaintiff, if he succeeded, was to have 1 per cent. commission. On December 10 Smith wrote to plaintiff saying he was fully authorised on behalf of the proprietor of the brewery to find a purchaser, and he should be pleased to avail himself of the plaintiff's assistance, adding that the letter was to stand good for seven days. Shortly afterwards the plaintiff introduced Mr. T. O'Hagan, managing director of the City of London Contract Corporation, who ultimately purchased the brewery for £250,000, and upon this sum he claimed commission at the rate of 1 per cent. from the proprietor, and in the alternative he sued Smith, who, he contended, had rendered himself personally responsible.

The defence was substantially that the plaintiff had failed to introduce a purchaser within seven days, that Smith was in negotiation with O'Hagan before the services of the plaintiff were accepted, and that the ultimate purchase was in no way brought about by the plaintiff's assistance.

At the end of the plaintiff's case, his Lordship held that there was no evidence to go to the jury against Seckham, and therefore directed a verdict for him.

The jury returned a verdict for the plaintiff as against Smith for £900, and this verdict, though set aside by a Divisional Court, was reinstated by the Court of Appeal.

Counsel for the plaintiff: Mr. Reid, Q.C., and Mr. Hollams; counsel for the defendant Seckham: Mr. Kemp, Q.C., and Mr. Chester; counsel for the defendant Smith: Mr. Cock, Q.C., and Mr. F. M. Abrahams.

Richell v. Selous.

Lord Mayor's Court, January 15, 1885.—Before Sir Thomas Chambers, Q.C., Recorder, and a Jury.

Reported ESTATES GAZETTE, Vol. xxviii., p. 27.

Reasonable time to supply draft agreement—Neglect of defendant in carrying through negotiations.

This action was brought to recover £360 for work done and commission due on a contract for the sale of certain ground rents to which the defendant pleaded not indebted.

The plaintiff was a commission agent, and in 1883 became aware that the defendant, who was developing an estate at Garratt Park, Wimbledon, was desirous of selling some ground rents. The defendant agreed in writing to give him half-a-year's purchase money for his trouble in introducing a customer who would take £720 worth of ground rents on property worth £16,000, at $22\frac{1}{2}$ years' purchase. The plaintiff's case was that he introduced Mr. Clutton, the well-known surveyor, who agreed to purchase, and at an interview between the parties it was estimated that the ground rents were worth £720 per annum, and Mr. Clutton was willing to purchase at that rate. In consequence of the defendant neglecting to supply Mr. Clutton with a draft agreement within two months of the interview the latter's solicitor wrote to the defendant's legal adviser stating that the matter must go off. The latter, however, wrote declining to let Mr. Clutton off, but in the result the negotiations came to nothing. The plaintiff consequently claimed the half of the £720.

The question left to the jury was whether two months was an unreasonable time to wait for the sending in of the contract. The learned Judge pointed out that if they thought it was reasonable, and that it was left in the mind of the defendant that an indefinite period was allowed, then the plaintiff could not recover; but if they considered it was unreasonable, he was entitled to a verdict, because it was neglect of the defendant which brought about a failure of the negotiations. The jury found a verdict for the plaintiff for the full amount claimed.

Counsel for the plaintiff: Mr. Kemp; counsel for the defendant: Mr. Masterman.

Cane, Wotton and Co. v. Holmes.

Lambeth County Court, January, 1885.—Before his Honour Judge Pitt-Taylor.

Reported *ESTATES GAZETTE*, Vol. xxviii., p. 19.

Purchaser refusing to complete owing to alleged misrepresentations of vendor—Commission recoverable from vendor.

In this case the plaintiffs were auctioneers, surveyors, land and business agents, and had carried on business for a number of years at Rye Lane Railway Station, Peckham.

The action was brought to recover £15 commission due upon the sale of a beerhouse and general stores, in Naylor Road, Queen's Road, Peckham, which the plaintiffs received instructions from the defendant to sell by private treaty.

The plaintiffs were old-established auctioneers of Peckham, and amongst other properties that they were called upon to submit to private treaty was an off-license beerhouse and general stores, situate in Naylor Road, Peckham, belonging to Mr. Mark Holmes, who called upon the plaintiffs and instructed them to sell the lease, goodwill, fixtures and fittings for the sum of £325. The plaintiffs, in due course, advertised this business amongst numerous others in various newspapers, and within the course of a few days the plaintiffs sold the business to a Mr. Edwards, who agreed to purchase the free beerhouse at the full price required by the defendant, and paid a deposit into the hands of the auctioneers, which the defendant duly received. Vendor and purchaser signed the usual contract to complete in 14 days, but, for some reason which the plaintiffs were unable to find out, the purchaser refused to complete the purchase owing to some alleged misrepresentations made by the defendant, which the auctioneers had nothing whatever to do with. As the defendant refused to take steps to enforce the contract which the plaintiffs had prepared and stamped, the plaintiffs thought that they were bound, in common fairness to the profession, to institute these proceedings to recover recompense for the time, trouble and expense devoted to this business, and they asked his Honour to tell the jury whether they were entitled or not to the claim which they had made. The jury's attention was drawn to the similar case of "*Prickett v. Badger*," which bore a striking resemblance to the plaintiffs' case, showing that they could recover.

Mr. John B. Wotton, of the firm of Cane, Wotton and Co., was called to substantiate the facts of the case, stating that he had personally conducted the business between the parties, and that Holmes and Edwards had both signed the contract at their office, at the agreed price of £325, the deposit being paid at the same time, and the defendant gave a receipt for the money.

The defendant's solicitor, in cross-examination, put in a letter where plaintiffs had agreed to accept a sum without prejudice in settlement, but the defendant

would render no satisfactory reason why he did not sue for the specific performance of the contract, and had pocketed the whole of the £20 paid as deposit. It was further proved that although plaintiffs had not sold many public-houses, they had sold a house of Messrs. Morgan Bros., who were defendant's brewers, and no hitch had then occurred in the transfer of the business.

Judgment was given for the plaintiffs for the full amount of the claim.

Horne v. Eberle.

Queen's Bench Division, November 29, 1884.—Before Mr. Justice Lopes.

Reported ESTATES GAZETTE, Vol. xxvii., p. 480.

For commission to be recoverable the lender procured must be able and willing to lend the money.

The claim here was for £1,000 commission, which the defendant in a letter of January 15, 1884, agreed to pay upon the plaintiff procuring a loan of £61,000 upon the security of the Grand Hotel, Liverpool. The statement of defence denied that the defendant ever obtained through the introduction of plaintiff or otherwise the sum of £61,000, or that any commission had ever become due from the defendant to the plaintiff. In the course of the trial the plaintiff's case shaped itself into this—That he introduced to the defendant a person ready and willing to lend the money, but that the negotiations broke off owing to the defendant having misrepresented the value of the security, or alternatively owing to the lender wrongfully refusing to complete. The case for the defence was that the loan had only fallen through because the lender introduced by the plaintiff never was in a position to advance the money, and that the plaintiff's contract was not complete until he had introduced a party able, as well as willing, to lend. The contract sued upon was in these terms:—"I hereby agree in the event of my obtaining through your introduction the sum of £61,000, or any other sum I may accept as a loan or mortgage of my property at Liverpool, called the Grand Hotel, to pay you a commission of £1,000 on the amount of such loan." This contract was signed by Mr. Eberle, the defendant, who at the same time agreed in writing to leave the completion of the mortgage in the plaintiff's hands exclusively until February 15. On January 17

the plaintiff, as agent for Eberle, concluded the agreement in writing with Mr. F. G. Horne, of 36, Cornhill, by which the latter agreed to advance the required sum of £61,000, "without loss of time," and "in all probability before February 5 next," subject to the security being as represented to him, the agreement further representing the security as including "the Grand Hotel, Liverpool, together with all fittings, decorations, furniture, plate, linen, etc., therein." On receiving this agreement, Mr. Eberle's solicitors wrote to the plaintiff expressing surprise at the inclusion of the furniture, plate, etc., and pointing out that the commission note only authorised the negotiation of a loan on "the Grand Hotel," to which the plaintiff replied that the furniture, etc., was included in the particulars of instructions, but that he had a written understanding with Mr. Horne that no bill of sale should be registered in respect of this portion of the security. Further correspondence passed, and on February 8 Mr. Horne wrote to the plaintiff that the security had been represented to him as worth £195,000, and as this now appeared to be incorrect, the agreement must be cancelled. In forwarding this letter to Mr. Eberle's solicitors, the plaintiff described it as "without foundation," and said that Mr. Horne must be held to his agreement. In his evidence at the trial the plaintiff adhered to these expressions, and said that he considered Horne had wrongfully refused to carry out his agreement. It was stated, but not proved in evidence, that Mr. Horne had sent down a valuer, who valued the property at £41,000.

Neither side called Mr. Horne in the first instance, but upon Mr. Winch taking the objection that the plaintiff must show that Mr. Horne was able and ready to lend, and the defendant wrongfully refused to complete, the Judge adjourned the trial for the attendance of Mr. Horne. Mr. Horne being called, admitted that he could not have produced £61,000 without re-hypothecating the loan, but that his solicitors had made arrangements by which the money would have been forthcoming, subject to the security being satisfactory. An auctioneer was called who had valued the property for another party, and said that he had reported that the security was not safe for a trustee to advance £60,000; but he should say the land and buildings would fetch £60,000 at a forced sale.

The learned Judge, in giving judgment, said:—The contract is contained in a letter of January 15, 1884. (His Lordship read the letter.) What is the meaning of this contract? I think it is an undertaking by the defendant to pay commission if the plaintiff procures a lender ready and willing to advance the money. If the lender, when procured, refuses to advance the money, or if there is any infirmity of title, or if the property is not such as the defendant represented it to the plaintiff this is immaterial. The plaintiff has still performed his part of the contract, and is entitled to his commission. It is essential, however, that a lender ready and willing and able should be procured; otherwise commission agents might earn their commission without rendering any service to their employers. They might get a contract signed by a man of straw and then claim their commission. The question in this case is, Has the plaintiff procured a lender willing and able to lend the money, against whom the defendant might, with some chance of success, bring an action for specific performance, if necessary? I am of opinion that Mr. Horne was not in a position on February 16, when the contract was to be fulfilled, nor at any time, to advance the money. It was contended that the contract went off because the property was not as represented. I have no evidence of that before me. The evidence is the other way. Mr. Wyand, who was called for the defendant, swore that the property, including the furniture, would, at a forced sale, produce £60,000.

His Lordship therefore gave judgment for the defendant, with costs.

Counsel for the plaintiff: Mr. Blake Odgers; counsel for the defendant: Mr. Winch.

Helmore v. Buschman.

Lord Mayor's Court, October 17, 1888.—Before Sir Thomas Chambers, Q.C., and a Jury.

Reported *ESTATES GAZETTE*, Vol. xxxii., p. 216.

No written agreement for commission—Conflict of evidence.

The object of this action was to recover commission alleged to be due to the plaintiff, Mr. Frederick Helmore, of Camden Town, for the sale of a house for the defendant, Miss J. M. Buschman, and for fees as an auctioneer and surveyor, for making an inventory of

the furniture and a survey of the state and sanitary condition of the house.

The plaintiff said he had been in practice for many years, and had been introduced to the defendant, who was the possessor of the lease of a house at Primrose Hill. He introduced Mrs. Kitts to the defendant, the price being agreed at £560, and he procured part of the money from a solicitor, giving a bill of exchange for the rest. After some negotiations had been entered into, he asserted that defendant expressed her willingness to take almost anything for the house, as there were so many houses to let in the neighbourhood. In cross-examination the plaintiff said Mrs. Kitts and the defendant lived in the same house together at the time. When the defendant said she wanted to sell the house, he (plaintiff) saw Mrs. Kitts in another room, and asked her if she would purchase the house. She said she had no money, and he then told her he could find the money if she would buy. Thereupon she said she would buy, and he consequently claimed his commission. He did not take instructions from the purchaser to make the inventory, and it was not done for her protection.

The defendant gave evidence to the effect that she was never introduced by the plaintiff to Mrs. Kitts, inasmuch as she had known her for two years, and Mrs. Kitts corroborated this evidence; but the jury found for the plaintiff for £22 16s.

Counsel for the plaintiff: Mr. Briggs; counsel for the defendant: Mr. Witt.

Hockley v. Foot.

Lord Mayor's Court.—Before the Assistant Judge and a Jury.
Reported *ESTATES GAZETTE*, Vol. xxxii., p. 231.

Claim for rent and counterclaim for commission.

The plaintiff, Mr. W. Hockley, sued the defendant, Mrs. E. Foot, for £7 10s., the amount of one quarter's rent. Defendant pleaded never indebted, and set up a counterclaim for commission.

On behalf of the plaintiff, several letters were put in to prove the claim, one of which was written by the defendant in answer to one from Mr. Vant, plaintiff's solicitor, stating that it was not convenient at that time for him to pay the rent just due, but he would call

and do so as speedily as possible. It was denied that any arrangement had been entered into between plaintiff and defendant for the sale of the house, and Mr. Hepburn, the buyer, swore that the defendant had nothing whatever to do with the selling of the house. He purchased it for £200 from the defendant's solicitor, to whom he had been introduced by a Mr. Roberts.

For the defence it was contended that plaintiff's solicitor had agreed to allow the defendant the usual auctioneer's commission if he succeeded in selling the house, and that he did succeed in doing so. Defendant and his wife both swore that the promise had been distinctly made to them by Mr. Vant, and that they had been put to considerable trouble and expense in endeavouring to let the house. Mrs. Foot said that she had recommended the house to Mr. Hepburn, and that gentleman had told her that he should never have bought it had it not been for her recommendation.

The jury returned a verdict for the plaintiff for the amount claimed, and found for the defendant on the counterclaim.

Counsel for the plaintiff: Mr. Lewis Glyn; counsel for the defendant: Mr. Ladbury.

Bott v. Hartley.

Lambeth County Court, October 16, 1888.—Before his Honour Judge Powell.

Reported *ESTATES GAZETTE*, Vol. xxxii., p. 244.

Breaking off Negotiations.

This was an action brought by the plaintiff, an auctioneer and house and estate agent, of Tulse Hill and Herne Hill, to recover from Mrs. Margaretta Catherine Hartley, formerly Mrs. Knight Smith, the sum of £25, commission on the sale of a house known as Tremaine, Croxted Road, Dulwich.

It appeared from the opening by counsel and the evidence that the plaintiff had acted as agent for the defendant for some considerable time. He had originally sold the house to the defendant, and afterwards had let it furnished for about a year, at the termination of which he had acted for the defendant in the matter of the dilapidations, amounting to between £30 and £40. On March 1, 1888, defendant gave plaintiff instructions to sell the house for £1,000, and the household effects at a valuation. Plaintiff at once had a board placed

in front of the house stating the dwelling was for sale. On March 3 Mr. James Green called on the plaintiff and asked particulars of the property. He stated that he owned several houses in Croxted Road, and as he did not wish Tremaine to be sold to anyone who would lower the rental value of the property, he would offer £800 for the house. The plaintiff submitted this offer to defendant, who declined to accept it. Upon this plaintiff again saw Green, and secured an advanced offer of £900, to include all fittings. Plaintiff again laid this offer before defendant, who refused to accept less than £920; but ultimately Green agreed to buy, and the defendant agreed to accept £920 to include all fittings. Plaintiff thereupon wrote Green to appoint an early date for payment of deposit and to sign the contract, when Green stated that he thought his son, who it appeared was the principal in the matter, would not purchase the house. Thus the matter remained for some few days, the plaintiff calling upon Green, who was always out. Plaintiff eventually found that the defendant had removed the notice board from the premises, and had sold the property behind his back to Green's daughter, who lived with him. Defendant had never instructed plaintiff to remove his board or to take the house from his books. Immediately he discovered what had been done he gave written notice to defendant that, as the property was sold through his introduction, he should claim commission. Plaintiff, after some time had elapsed, wrote to defendant threatening proceedings if his commission was not paid. Defendant called on plaintiff at his office and promised to pay at a later date. This was not done, and plaintiff instructed his solicitor to commence proceedings.

The defence was that plaintiff's negotiations had ceased when Green's son declined to purchase, that plaintiff had not brought about the sale to the daughter, and that really no sale had taken place, as the purchaser had borrowed all the purchase money from defendant's solicitor, and deposited with him a further security of ground rents for £300. Both the solicitors for defendant and the defendant's mother, were closely cross-examined as to their conduct in the negotiations, the solicitor ultimately stating that he knew at the time Green's daughter was purchasing that some house agent had the matter in hand, and that he had endeavoured to obtain an indemnity from Green's daughter as to

plaintiff's claim. He produced several letters from Green's daughter, defendant, and himself, wherein it appeared that plaintiff's claim was repeatedly mentioned, and that the daughter at last wrote a letter stating that she had not employed any agent in the matter. Defendant's mother stated she had sold all the furniture, but had not paid Knight Smith any money. She admitted removing the board, but stated that the house had been removed from plaintiff's books at the time, although she could not fix any date, or produce any document showing when such instructions were given.

After considerable argument and discussion by counsel, the learned Judge summed up, remarking that the plaintiff had been badly treated. He had exhibited zeal, tact, and ability in his negotiations with Green, and had been put to considerable trouble; but he (the judge) was there to administer the law as he found it. Hard cases made hard law, and this was one of the hard cases. What he had to consider was, "Did the plaintiff carry on and complete the negotiations with Green's daughter?" He could not find any evidence to show that plaintiff continued negotiating after the refusal of the son to purchase, and upon this he must very reluctantly find a verdict for the defendant, but would not allow costs.

Counsel for the plaintiff: Mr. Crispe; for the defendant: Mr. Colam.

Daggatt v. Ratcliffe.

Queen's Bench Division, November 16, 1888.—Before Mr. Justice Hawkins and a Common Jury.

Reported ESTATES GAZETTE, Vol. xxxii., p. 287.

Commission not recoverable where no bonâ fide purchaser put forward.

This action was brought by a commission agent of Manchester to recover damages for the breach of an agreement to pay commission for the procuring of a purchaser for the defendant's brewery, in the Rochdale Road, Oldham. The claim was for £1,600. The defendant pleaded that the agreement was not such as was alleged, and denied that the plaintiff obtained a purchaser.

The plaintiff's case was that the defendant was the owner of a brewery at Oldham, upon which he had been making a profit of between £5,000 and £6,000 a year.

At the beginning of the year 1887 he called upon Mr. Daggatt at his offices in Ward's Buildings, Manchester, and consulted him with respect to finding a purchaser for his business. Mr. Ratcliffe expressed his willingness to sell the brewery for £60,000. It was subsequently arranged that the plaintiff should receive a commission of 1 per cent. on the purchase-money, and that any friend who might assist him in finding a purchaser could have any sum which they obtained over and above £60,000. With the assistance of a Mr. Ashwin the plaintiff found a purchaser who was willing, he said, to give £61,000. An agreement was drawn up by Mr. Clegg, solicitor, of Oldham, who was acting for Mr. Ratcliffe, and everything appeared to be settled, the date fixed for completion being July 1. The defendant, however, refused to sign the contract without a deposit of 10 per cent., and ultimately took the brewery out of the market as far as the plaintiff and his friends were concerned. Mr. Daggatt contended that he had done all that a commission agent could do under the circumstances, and he was therefore entitled to his remuneration.

The plaintiff was called, and stated that at the time the arrangement with Mr. Ratcliffe was come to he was carrying on business under the name of Douglas and Daggatt. He still resided in Manchester. Mr. Ashwin represented a syndicate in London who were interested in the purchase of breweries. In cross-examination the plaintiff said he knew nothing about the purchaser. He only knew that he sold the brewery to Mr. Ashwin, a solicitor, for his client. The purchaser he had found was Mr. Ashwin. A letter from Mr. Ashwin to the plaintiff was then read, in which it was stated that the name to fill in the contract as purchaser was Mr. Robert Edmund Davis, of London, and on being further questioned, Mr. Daggatt said that was the name which he supplied to the defendant. He proceeded to say, "I never saw Mr. Davis, and never made inquiries about him. I made some inquiries about Mr. Ashwin. Mr. Ashwin was a promoter, and breweries were all the go just then. I was introduced to him by a gentleman in Manchester, and I had had other matters with him which had convinced me that he was quite straightforward. I expected that it was a syndicate buying the business. Mr. Ashwin, I felt sure, was representing one; he had told me so. Mr. Ashwin told me that the

gentlemen composing it could find two millions as easily as sixty thousand ; the larger the thing was the better."

Mr. T. S. Ashwin was also called, and stated that he was a solicitor. At the time he arranged the purchase of the defendant's brewery he was acting for Messrs. Panmure Gordon and Co. and the City of London Contract Corporation. Mr. Davis was a stockbroker. He admitted in cross-examination that he was not practising as a solicitor in 1887. Mr. Davis was one of a very powerful syndicate. It was proposed to form a limited company. Clarke was a nominee of Davis's. Mr. Davis did not wish his name to appear. There was in his opinion a binding contract on the correspondence for Mr. Davis to pay Mr. Ratcliffe £60,000. Mr. Davis asked him to provide a nominee, as, being a member of a syndicate, he did not want his name to appear in the contract.

The defendant called no witnesses, and it was submitted on the part of the plaintiff that the question whether the plaintiff obtained a purchaser was a question for the jury.

In summing up Mr. Justice Hawkins said, "As far as I can see there was no syndicate formed, because Mr. Ashwin says he went to Liverpool upon a sort of roving commission generally to inquire after breweries. None of those whose names were mentioned could be sued under the agreement. It is not necessary to say anything about Clarke ; he is admittedly a mere man of straw. There was no £6,000 paid. There was nothing binding on anyone. The responsibility is shifted on to the nominal man of straw—and I confess I don't think you (plaintiff's counsel) would like to hear what is passing in my mind in reference to that transaction." A verdict and judgment were given for the defendant.

Counsel for the plaintiff: Mr. Crump, Q.C., and Mr. Banks ; counsel for the defendant: Mr. Addison, Q.C., M.P., and Mr. Smyly.

Titherley v. Richards and Co.

Westminster County Court. November 17, 1888.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxii., p. 304.

Procurator fee for obtaining a mortgage—No fixed scale—Charges must be reasonable.

This action was brought by Mr. G. W. Titherley, a builder, of Clapham, against Messrs. Richards and Co.,

auctioneers, surveyors and estate agents, of No. 15, Victoria Buildings, Victoria Station, and Wandsworth Common and Balham, to recover the sum of £32 18s. 6d. The proprietor of the business of Messrs. Richards and Co. was formerly a Mr. Morgan. During his proprietorship the present plaintiff instructed him to dispose of by public competition several houses situate in Lynette Avenue, Clapham, at the nominal charge of half-a-guinea per house should the sale prove unsuccessful. The property was not sold, but was afterwards mortgaged by the plaintiff through the instrumentality of Mr. Morgan, that gentleman receiving as his commission or procuration fee 1 per cent. on the amount of the mortgage. In September of last year the business changed hands, the purchaser being the present proprietor, Mr. Barrow. In November the plaintiff required a further advance of £150 on the property. This sum Mr. Barrow was willing to lend, receiving as his commission and interest £15, making a total of £165, which was to be repaid in three instalments, in three, six, and nine months. Mr. Titherley then required the defendants to dispose of other property situate in Lynette Avenue, he asserting that it was agreed between Mr. Barrow and himself that the terms should be as before—viz., half-a-guinea per house. This Mr. Barrow emphatically repudiated, he contending on the other hand that he should be paid his out-of-pocket expenses in addition. The property not being sold, Messrs. Mote and Son, solicitors, of Queen Street, Cheapside, introduced by the defendants, agreed to advance £1,400 upon the security of four of the houses. Messrs. Richards and Co. thereupon charged the plaintiff £11 18s. 6d. out-of-pocket expenses on the unsuccessful sale, and 2 per cent. on the amount of the mortgage. These two sums they deducted from money which they held belonging to the plaintiff and forwarded to him the balance. The plaintiff thereupon brought the present action.

Mr. G. W. Titherley, the plaintiff, deposed that he was a builder carrying on business at Clapham. During the summer of 1887 he opened negotiations with Mr. Best, the branch manager of Messrs. Richards and Co., with reference to selling the property. He agreed with that gentleman to pay half-a-guinea per house, should the sale prove unsuccessful. Mr. Barrow, the principal of the firm, agreed to the transaction. The sale ulti-

mately proved unsuccessful, the reserve not being reached. Later on in the year he consulted Mr. Barrow with reference to his obtaining an advance upon the security. Mr. Barrow introduced him to Messrs. Mote and Son, who advanced him £1,400. He paid Messrs. Mote and Son £14, being at the rate of 1 per cent. for that transaction. Mr. James Best said he was manager to Messrs. Richards and Co., before Mr. Barrow purchased the business. Mr. Morgan was the then proprietor. He told the plaintiff that Mr. Barrow was willing to do business on the same terms as before. On the part of the defendants, Mr. James Barrow said that he purchased the business of Messrs. Richards and Co. from Mr. Morgan on October 13, 1887. On November 14 the plaintiff called at his office. He made an entry in his diary of the substance of the conversation. The plaintiff wanted a loan of £150, the security being four houses which were already under mortgage for £1,400. He then agreed to advance the money, receiving £15 as interest and commission. The plaintiff then said he wished to sell four other houses, and it was agreed between them that should the sale be unsuccessful, he should be paid his out-of-pocket expenses. Subsequently the plaintiff desired to mortgage the property. Nothing definite as regards his charges was arranged between them. He made his valuation and report, and upon the faith of that report Messrs. Mote and Son agreed to advance £1,400 upon the security. There was no fixed scale of remuneration for obtaining a mortgage; it depended upon the nature of the security and other circumstances. He considered that 2 per cent. was a fair sum for securing the amount of the mortgage.

In addition to these witnesses, Mr. William V. May, formerly manager at Victoria for Mr. Morgan, said that he informed the defendant in the summer of last year that the business was about to change hands. He considered that £11 18s. 6d. was the out-of-pocket expenses of the unsuccessful sale, and that 2 per cent. was a fair amount to charge as a procuration fee for obtaining the advance upon the property. Mr. Walter Hall, surveyor and land agent, 40, Chancery Lane, said he had had 15 years' experience in his profession. There was no fixed scale of professional charges for negotiating mortgages. He had no hesitation in saying that 2 per cent. was a reasonable charge. Mr. John Jones, auctioneer and surveyor, 20, St. George's Road, South Belgravia,

gave corroborative evidence, and in the result the learned judge decided that the defendants were entitled to their expenses out-of-pocket, and that 1 per cent. was sufficient as procuration fee for obtaining the mortgage.

Counsel for the plaintiff: Mr. A. Bethune; counsel for the defendants: Mr. H. A. Forman.

Giddy and Turner v. Pink.

Guildford County Court, December 20, 1888.—Before his Honour Judge Lushington.

Reported ESTATES GAZETTE, Vol. xxxii., p. 368.

Reduction of commission to party in the trade, but no unauthorised deduction allowed.

This was a claim for £10 10s., balance of a commission due to Messrs. Giddy and Turner, estate agents, of London and Guildford, for the sale of a house belonging to defendant, a builder, of Milford. The house, which was called Shackleford House, was sold for £4,250, on which sum a commission of £108 15s., according to the scale arranged, was due to them, but a third of this was allowed Mr. Pink, he being in the trade. Mr. Pink now wanted to deduct £10 10s. as commission to Mr. J. C. Collier, of Godalming, who acted as his agent. It was stated for the defendant that the plaintiffs acquiesced in the arrangement as to employing Mr. Collier, but the plaintiffs denied this. In 1886 the defendant instructed them and asked them to put his house in their list. This they did. Mr. Pink wrote afterwards saying that Mr. Collier was his agent, and they could get any further particulars from him. After some correspondence, in which the plaintiffs refused to agree to Mr. Collier being mixed up in it, they wrote to Mr. Pink saying they did not do business in that way, and unless they heard from him they would remove his house from their list. Mr. Pink replied that if they found a customer he would agree to their usual conditions, a copy of which he would like to have sent them; and this was done.

The defendant's counsel argued that Mr. Pink did not sign the conditions, and therefore did not agree to them, but the Judge thought Mr. Pink's letters were a contract; and it was then proved that the plaintiffs introduced a Mr. Eccles, who eventually became a purchaser

of the house. This introduction was admitted, but the defendant alleged that negotiations were broken off with Mr. Eccles, and were afterwards renewed by Mr. Collier. The Judge thought there was nothing in the defence, and that the law was quite clear on the point.

Judgment was given for the plaintiffs for full amount claimed with costs.

Counsel for the plaintiffs: Mr. Duke (instructed by Messrs. Law and Co.); counsel for the defendant: Mr. Brexholm (instructed by Messrs. White and White).

Millar v. Toulmin.

Queen's Bench Division, November 30, 1885.—Before Lord Chief Justice Coleridge and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. xxviii., p. 520; Vol. xxix., pp. 286 and 330; and Vol. xxx., p. 453.

Property let by an agent to a tenant who afterwards purchases—The question of the effective cause of the transaction is one of fact.

In this lengthy and important case, the question was raised as to the right of an estate agent to commission on the sale of an estate, the point being whether, when a property is let by an agent to a tenant who afterwards purchases it, the agent is entitled to commission on the sale. The tenant for life of the estate who, prior to Lord Cairns' Act of 1882, had not power to sell the estate, had let it for six months, and then for a long lease for years; and afterwards, after the Act, had sold it to the tenant for £75,000; and the agent, having been paid his commission on the letting, claimed commission on the price, which was resisted. The plaintiff was an estate agent in Grafton Street, and it appeared that his terms were these (which were similar, it was stated, to those of other agents), "Where a property is let to a tenant who becomes the purchaser, commission on the sale will be charged—deducting the commission on the letting," the commission, however, only to be due if Mr. Millar introduced the tenant or purchaser. In November, 1881, Mr. Toulmin, who had a life interest in a mansion and estate in Hertfordshire, known as Childwickbury, called on Mr. Millar to place it in his hands for letting furnished, and told him, in answer to a question, that he should be glad to sell it if he could for £84,000. The plaintiff being acquainted with Mr. Blundell Maple, whom he knew to be in want of a country house,

offered it to him—telling him that the price was £85,000 (the price being raised £1,000); and he, after looking at it, took it furnished for 12 months, at £850 a year, £530 to be paid for the first six months, £320 for the second, with the option of having it for 12 months. Upon this Mr. Millar sent in his claim for commission on the rent for six months—£61, and Mr. Toulmin sent back a cheque for £76, supposing that would cover a letting for 12 months; but this was returned, as there was a question what was to follow. In the course of the six months, Mr. Maple, liking the property, took a lease of it for 17½ years from Mr. Toulmin. Upon hearing of this, Mr. Millar sent in his account in these terms:—

“January, 1880. Having received your instructions to find you a tenant or purchaser for your estate, Childwickbury, near St. Albans, registering particulars, attending Mr. Blundell Maple, whom I thought it would be likely to suit, when he appeared to entertain the matter and asked for further particulars, when he decided to go and look at the property, and desired me to make an offer to rent furnished, as he would not like to purchase until he had tried if it would suit Mrs. Maple, his offer being to rent furnished for a year at £860, with option of leaving at end of six months, the first six months’ rent to be £530, and the second £330, repaying £50, etc., which offer you accepted. Commission on first portion of rent, £530, and the £50, £29 6s.; other charges, valuation, inventory, etc., £32 15s. 9d.—£62 1s. 9d. To commission on the letting of Childwickbury at £720, and one of the farms at £200, together £920, on lease for 17½ years, £69; to commission on sum paid for fixtures, etc., £62 10s.—£192 11s. 9d.—Allowance made £42 11s. 9d.—£150.”

There were these words written on the account:—
 “Note.—In the event of the tenant purchasing the property the commission on the amount of the purchase-money will become payable.” As to this, however, the defendant did not assent to it, and wrote:—“As to the question of commission on the sale, the question must remain open, as I have only a life interest, but I have no intention of selling the property;” and his solicitor wrote distinctly disclaiming the liability for any further commission. In the result the £150 was paid to Mr. Millar. After this Mr. Maple, still liking the property, desired to purchase it, and after the passing of Lord Cairns’ Act of 1882, allowing the sale of settled estates

by tenants for life, negotiations took place between him and Mr. Toulmin, which resulted in the sale of the estate to Mr. Maple for £75,000, on which, in 1884, the plaintiff claimed his commission to the amount of £730. His full claim would have been £775, but he deducted £45 as the proportion of the commission on the lease. The claim was resisted and the plaintiff proposed a reference to the arbitration of an estate agent on his side and a lawyer on the defendant's side, and a statement of facts was drawn on the part of the plaintiff and sent to the defendant, the defendant making alterations by the insertion of certain passages. Nothing, however, came of the proposal for arbitration, and so this action was brought, in which the claim was put on two grounds—(1) A contract to pay according to the scale, and (2) to pay what was usual and reasonable.

The plaintiff was called and gave evidence in support of his case. He stated that the defendant came to him to let the property. He, knowing that Mr. Maple wanted to purchase such a property, asked defendant if he would sell, and he said he would, and gave him particulars for the sale:—"Price £84,000, and timber at a valuation, the agricultural rent of the estate being £1,500 a year, comprising three farms, two-thirds arable and one-third pasture, with a rent charge of £150 a year on the estate." Shortly afterwards he wrote to Mr. Maple about it—that is, as to letting—telling him at the same time it was for sale at such a price. "I have been on the look out for such a property as you wish to buy: it is an old historical property, very enjoyable," etc. (Particulars were referred to "on the other side.") Afterwards he saw Mr. Maple about it, and he said he thought it might suit him, that he would take Mrs. Maple to see it, and that if she agreed to it he would buy it. The terms for letting were £850 a year, the mansion being furnished. He saw Mr. Maple more than once about it. The defendant, knowing of the negotiations, saw him, and spoke of the commission, suggesting it should be paid by Mr. Maple, which the plaintiff said he told him could not be, as he was not acting for Mr. Maple. The defendant asked him what the commission would be on a sale at a price of near £90,000, and he handed him his scale of charges, and told him that it would be £900 or £1,000. The defendant suggested that if he was to pay that, then £1,000 ought to be added to the purchase-money, so that he was to ask £85,000

instead of £84,000. In consequence of that he wrote to Mr. Maple that as the trustees desired the money to be invested, he must add £1,000 to the price. The plaintiff was here asked whether, supposing there was a letting, say for 21 years, and in the course of the term the tenant, liking the estate, said he would purchase it, would the owner have to pay commission on the sale? He answered that that would depend upon what preceded the letting, and if, as here, the introduction was really for a sale, and the party only went into possession under a letting in order to see if he liked the property, then he would be chargeable with the commission on the sale, and that, he said, was this case. In cross-examination, he admitted that he had never received authority to sell for less than £84,000, and being asked whether, if the sale had been for £180,000, he would have been entitled to a commission upon it, he said, "Yes."

The witness being asked whether, if at any time during the joint lives of himself and Mr. Toulmin the estate was sold, he would be entitled to commission, he said, Yes. Even if you had gone to Australia immediately after the letting, and had had no further communication with Mr. Maple, you would still have been entitled to the commission?—Yes. You might have come home at 90 years of age and claimed the commission?—I do not know as to that.

The learned judge who had tried the case, Lord Coleridge, remarked: The claim is this—that as he brought the parties together, and they afterwards became vendor and purchaser, he was entitled to the commission.

The plaintiff said he had brought them together as vendor and purchaser.

Lord Coleridge: That is the question.

The plaintiff said it was the custom.

Lord Coleridge: It is not for estate agents to settle amongst themselves what should be paid to them.

The plaintiff, in further cross-examination, said he thought the original letting was preliminary to a sale, and being reminded that the lease intervened, he said it was because Mr. Toulmin was not then in a position to sell. Being asked why he was entitled to commission on the sale of furniture, etc., he said it followed upon his introduction. Asked whether if the purchaser had purchased any other estate of Mr. Toulmin he would be entitled to the commission, he said that if the land

was adjoining he would be. Asked if it was a different estate, he said, No; upon which Lord Coleridge asked—Why? It would have equally resulted from your introduction. To this he answered that he should not have thought it resulted from it.

In re-examination, he said, so far as he knew, the agent who introduced two parties together who became vendor and purchaser was entitled to commission on the sale. Lord Coleridge said that the mere introduction was not enough. The plaintiff must have been the effective cause of the transaction.

An estate agent was called to prove that the charge was reasonable, and he said that if an estate was put into the agent's hands "to let or sell," then, if after a letting there was a sale, the agent would be entitled to his commission. In answer to the jury, being asked how long afterwards the liability to commission would continue, he said five years.

On behalf of the defendant, it was pointed out that at the time of the letting Mr. Toulmin had no power to sell the estate, so that he could hardly have employed and empowered the plaintiff to sell it; and it was urged that the sale was two years afterwards, and that the plaintiff had done nothing to lead to it, and had had no communication with Mr. Maple in the meantime, and if the plaintiff's claim were to be supported, it would be very dangerous to enter the offices of an estate agent. Mr. Maple was called, and stated that Mr. Millar, the plaintiff, had nothing to do with the second purchase at the price of £75,000, which, he said, was never mentioned until about six months previously to it—in 1884. In cross-examination, he said he did not at first intend to purchase the property; he desired to find if it would suit him. He himself being an estate agent was challenged with a statement of his own terms, as to which, however, he said that he should not charge commission in such a case as the present, though he admitted that if in the original contract for letting there was an option for purchase then commission would be chargeable.

Mr. Toulmin, the defendant, was also called, and, though he admitted that he had received Mr. Millar's scale of charges, he denied that he had read them. There was at first, he said, nothing but a letting, and he had no power to sell until after the Settled Estates Act of 1882—that is in 1884. In cross-examination, however, he admitted that his trustees had large powers to sell under

the settlement, and that at the first he instructed the agent to let, and, if he could, to sell for £84,000, but not for less. This closed the evidence in the case, and the learned counsel for the defendant cited "*Curtis v. Nixon*," "that a custom that a house agent who introduces a tenant shall be paid a commission on every subsequent letting to the same tenant is irrational and bad."

On the part of the plaintiff, on the other hand, it was contended that the case last cited was different, because there the possibility of a purchase was contemplated from the first, and the purchase arose out of the original transaction which had been brought about by the plaintiff's introduction. Counsel quoted "*Mansell v. Clements*" and "*Watkins v. Rymill*," and contended that the question was whether the sale arose out of the introduction. Moreover, he urged that there was an express contract, as the plaintiff's scale of charges was handed to the defendant, and this made a contract even if the defendant had not read it.

Lord Coleridge, in summing up the case to the jury, said the question was whether the plaintiff, the agent, had by his acts brought about the particular transaction—that is, in this case, the sale of the property. Was this sale brought about by the act of the plaintiff? As to the suggestions of an actual contract, the plaintiff's authority to sell was for £84,000. No doubt there had been previous notice of the plaintiff's intention to claim the commission on any future sale, but it was not assented to, and, on the contrary, was expressly repudiated and dissented from at the time. The first transaction was a letting for 12 months. The second, entirely distinct, was a lease, on which, however, the plaintiff had been paid his commission. At that time the plaintiff had not the power to sell, and from that time—that is, from 1881 to 1884—no communication took place between the plaintiff and Mr. Maple. During all that time Mr. Maple was a mere lessee, and it was not until 1884—without any communication from Mr. Millar—he resolved to purchase. If the jury thought that the sale was "brought about by the acts" of the plaintiff then they would find in his favour. If they thought it an independent transaction, then they should find for the defendant. Then as to the actual contract set up on the ground of implied assent to the terms of the plaintiff's scale, he did not think it could be sus-

tained, for it did not appear that the defendant ever assented to it, and, on the contrary, he had sworn, and it was not controverted, that he had never noticed or read the paper, nor did it mean what was suggested. Mr. Maple's terms were the same, and yet he had stated that he never should make the charge in such a case as this—but only if the purchase was originally in contemplation, and provided for in the original contract. A man was not to be bound by the terms of a document he had never read, and, if he were, in this case the terms in question did not support the present claim, and, moreover, the defendant had expressly dissented. On the whole, therefore, the question would be whether the plaintiff by his acts brought about the transaction.

The jury found for the defendant, but the verdict was afterwards set aside by the Court of Appeal as being against the weight of evidence, and judgment was entered for the plaintiff for £676. On a further appeal being made by the defendant to the House of Lords, the original verdict of the jury in favour of the defendant was upheld, and the judgment of the Court of Appeal was reversed, with costs.

Counsel for the plaintiff: Mr. Murphy, Q.C., and Mr. Cagney; counsel for the defendant: Mr. Green, Q.C., Mr. Cock, and Mr. Beddall.

Pells v. Smith.

Lowestoft County Court, January 10, 1889.—Before his Honour Judge Sir Francis Roxburgh.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 31.

*Principal concluding transaction behind back of agent—
Commission recoverable.*

The plaintiffs, Messrs. Pells Bros., house and estate agents, of Lowestoft, sued the defendant, Mr. S. R. Smith, a grocer and draper, for a sum of £19 3s. for commission, on the introduction of a Mr. Ashby as purchaser of defendant's business, at 5 per cent. on the first £100 and 2½ per cent. on the remainder of the purchase money, which amounted to £666.

The evidence for the plaintiffs went to show that in May, 1888, the defendant called upon the plaintiffs, and gave them instructions to dispose of his business in Raglan Street, Lowestoft. The business was advertised by the plaintiffs, and on June 5 defendant wrote with-

drawing the property as he had sold it. As a matter of fact he had not sold it, and he went back to the plaintiffs again requesting them to try and sell it. An advertisement was again published in the papers, and in August a Mr. J. Ashby called at plaintiffs' office, and he received an order to view the business. When Mr. Ashby returned he said it was too large for him. On the following day defendant called on plaintiffs, and suggested that they should write to Ashby, but plaintiffs did not think it advisable. Messrs. Pells considered Ashby would not have it, and continued to answer other applications for the business. In September Mr. F. S. Pells saw defendant and Ashby, when defendant said he had disposed of the business to Ashby, and repudiated plaintiffs' action in the matter on the ground that they had declined to write to Ashby. He told plaintiffs' clerk that if they wanted their commission they would have to sue him for it. In cross-examination Mr. S. F. Pells said defendant did not offer plaintiffs £10 first and afterward £15. Plaintiffs first charged £33 6s., being 5 per cent. on the £666, but amended their charge to the present claim, as they did not do the valuation. They had, however, reduced their charge contrary to their solicitor's advice, who considered them entitled to the larger amount.

The defendant gave evidence to the effect that he went to plaintiffs' offices and told them distinctly in the presence of their clerk that if they sold his business he would pay them £10. About six weeks afterwards he increased his offer to £15 if they sold his business. When plaintiffs said they would not write to Ashby he went to him and sold the business to him, and the bargain had been concluded.

His Honour said the plaintiffs brought the purchaser and seller together, and therefore, if defendant went behind their backs and sold the business, he still would have to pay for the introduction which he had himself authorised the plaintiffs to procure. The action was really undefended, and should never have been defended. He did not believe that any such bargain as had been described ever took place. A purchase had been brought about by the agency of the plaintiffs, but defendant went behind their backs as soon as he found they knew someone likely to buy the business, and, to escape paying their commission, quietly sold the business, pocketed the money, went to London, and then snapped his

fingers at the plaintiffs. He gave judgment for the plaintiffs.

Mr. Wiltshire appeared for the plaintiffs, and Mr. Linay for the defendant.

Evans v. Hill.

Deal County Court, January 11, 1889.—Before his Honour Judge Selge.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 48.

The relation of vendor and purchaser brought about by the agent.

The plaintiff in this case was a commission agent, and having heard that the business of the Rising Sun, Walmer, was to be disposed of, he made arrangements to meet defendant, and an agreement was made for plaintiff to receive 5 per cent. if he effected a sale, and out-of-pocket expenses. Defendant said he would give him more than that, but plaintiff replied that that was his charge, and he went to the house and took an inventory at defendant's own request. Mr. Hargrave, the present tenant, called upon plaintiff, and he took him over the house as a purchaser, in company with Mr. Hill, showing him everything that was to be sold. Mr. Hargrave did not make up his mind, but said, in the presence of defendant, that he would write concerning it, and he subsequently purchased the business from the defendant. Plaintiff saw defendant, who said that Mr. Hargrave did not like agents, and would have nothing to do with it, but he (plaintiff) would have his money all right. Plaintiff called upon defendant for his commission, but he said he would not get anything, as he sold the house through the brewer's agent. Plaintiff replied that he sold it to the man he introduced. Defendant then said he might pay him for the advertisements. Five per cent. was the usual charge. He had paid more than 12s. 6d. for advertisements. In cross-examination, plaintiff said that the defendant told him he did not like the business, and wanted to get out of it. In giving him instructions to let the house, defendant said, "Get me a customer as quickly as you can; push it." He did not remember defendant saying it was already in the agent's hands, and therefore he could not give it to him.

The plaintiff's housekeeper stated that the defendant came several times to plaintiff's shop, and had asked her

if plaintiff had let the Rising Sun at Walmer. She heard defendant ask plaintiff if the people had been about the house, and to push the house as much as he could, and stand on nothing to get rid of it. The landlord of the Rising Sun gave confirmatory evidence.

For the defence the defendant deposed that the plaintiff told him he could let the house, and asked him what he wanted for it. He replied £110, without any valuation, and explained to plaintiff how many rooms there were, and plaintiff said his terms were 5 per cent. He gave plaintiff no instructions to let the house. When they asked the price he said £150. Defendant said nothing, but he afterwards told plaintiff he was asking too much money, and would never let the house if he asked so much. When Mr. Hargrave returned, he asked defendant what he paid to go in, and he replied £114. Hargrave said that if plaintiff had anything to do with it he would not. £100 was agreed to. Plaintiff afterwards came up and said he could have got more money if defendant had left it in his hands. He went to plaintiff's shop, but did not offer to pay him anything, or put the house in his hands.

The learned judge said the only question was whether the relation of vendor and purchaser was brought about by the introduction of the plaintiff, and on that point there was no doubt. He must give judgment for plaintiff.

Mr. A. C. Brown appeared for the plaintiff, and Mr. E. B. Payne for the defendant.

Wansbrough and Sons v. Lewis.

Weston-super-Mare County Court, January 14, 1891.—Before his Honour Judge Metcalfe

Reported ESTATES GAZETTE, Vol. xxxiii., p. 63.

Signing agreement as to commission under misapprehension.

The plaintiffs in this case were house and estate agents of Weston-super-Mare, and claimed of the defendant £33 18s. 6d. commission on the purchase of certain property. The defendant paid £13 13s. 6d. into Court and disputed the balance.

The particulars of the plaintiffs' claim were—March, 1888, commission as agreed on the purchase of No. 16, Claremont Crescent, at £650, at 2½ per cent., £16 5s.; April, 1888, commission on the purchase of Nos. 1 and

2, Park Crescent, at £700, at $2\frac{1}{2}$ per cent., £17 10s. ; and in May, of the same year, removal of pianoforte, 3s. 6d. The defendant had paid into Court in respect of the first item £6 10s., in respect of the second item £7, and the third item was paid in full. The question to be tried was as to whether the commission was to be $2\frac{1}{2}$ per cent. or a lesser sum, and whether the defendant had paid into Court sufficient in respect of that commission.

The plaintiffs' case was that in the beginning of 1888 the defendant, a young lady of Weston-super-Mare, came of age, and came into possession of a certain sum of money, and as she had known Mr. Wansbrough for some time, he having acted for her family for many years, she saw him about investing certain sums of money, and he advised her that if she could purchase house property at what he, she, and her solicitors might consider fair prices, it would be a good investment. Messrs. Baker, Son, James and Reed acted as her solicitors, and no complaint was ever made by them in regard to the amount paid for the properties. In March, 1888, the plaintiffs had upon their books, acting as they were for the vendor (Mr. Chalmers), No. 16, Claremont Crescent, and they mentioned this matter to Miss Lewis. Negotiations were entered into with the owner, and he wanted £700. Ultimately, however, it was arranged that he should take £650 if the transaction was to be clear to him of commission. Plaintiffs then informed the defendant that she would have to pay the commission of $2\frac{1}{2}$ per cent., and she signed a document agreeing to the purchase on these terms. The contract was sent to her solicitors, and the transaction was completed. Later on the defendant spoke to the plaintiffs with regard to some property in Park Crescent. The owner, Mr. W. C. Cox, asked £780, but negotiations were continued, and the owner was induced to take £700 for the property, subject to Miss Lewis paying the commission. It was considered to be an advantageous arrangement, as the commission would only amount to about £17, whereas the abatement on the purchase money was £80. Two documents were signed, but one of them could not be found. The other was a paper signed by the defendant promising to pay Messrs. Wansbrough's costs.

The defence briefly was that the defendant's signature to the documents having relation to commission was

obtained from her under the impression that it was simply an authority for the purchase of the property; that the said documents were not read over to her nor explained; and that the defendant had no intimation that she would be expected to sign a document agreeing to pay $2\frac{1}{2}$ per cent. Counsel admitted that the term "commission" was used on the second occasion, but the defendant was only led to suppose that it would be a trifle. Miss Lewis was young and inexperienced, and she went to Mr. Wansbrough in all confidence, and it was not until a dispute arose over a bill for some furniture that she decided to do business through Messrs. Norton and Lalonde instead of Mr. Wansbrough. The question was whether Mr. Wansbrough was justified in charging $2\frac{1}{2}$ per cent. The defendant would emphatically state that the $2\frac{1}{2}$ per cent. was never brought to her mind until the bill was sent in.

The learned Judge considered that 1 per cent. was sufficient remuneration under the circumstances, and that as the plaintiffs had not made out their case, judgment must be simply for the amount which had been paid into Court.

Counsel for the plaintiffs: Mr. H. R. Wansbrough; counsel for the defendant: Mr. Elliott.

Wright v. Wiltshire.

City of London Court, January 30, 1889.—Before Mr. Commissioner Kerr.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 79.

Agent entitled to commission where a sale goes off merely by the default of his principal.

In this case Mr. Alfred Wright, trading as Wright and Co., auctioneers, valuers, and general business agents, of 2, Union Court, Old Broad Street, sought to recover payment of £5 commission for obtaining a purchaser of a business which was put into his hands by the defendant, Mr. W. Wiltshire, of Epsom.

It seemed from the evidence that the defendant had a milk business for sale, and he asked the plaintiffs to obtain a purchaser for him. The price he mentioned he should require was £100, and he asserted that the business he did was 80 quarts of milk per day. The plaintiff found a purchaser named Gore, who said that having paid the plaintiff a deposit of £9, he went with

the defendant to see the round. He found, he stated, that instead of 80 quarts he did not even do 60 quarts a day. The business was much over-rated, so he declined to have anything to do with it. The plaintiff said he was to be paid 5 per cent. commission on procuring a customer, but he certainly did not know that the defendant's business was to have turned out as it did or he would not have sent Mr. Gore down. The defendant said the business was as good as he represented it to be, but in answer to this statement, Mr. Gore said the defendant offered to take £60 instead of the £100.

In giving judgment his Honour said the defendant had made a terrible bungle of the whole affair. There was a conflict of evidence, but he must find for the plaintiff for the amount claimed.

Mr. Arthur Speechley appeared for the plaintiff.

Walton v. Smirke.

Lord Mayor's Court, February 22, 1889.—Before the Assistant Judge and a Jury.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 144.

Commission on introduction of builder—Custom of the trade.

This was an action brought by Mr. A. Walton, surveyor and auctioneer, carrying on business at 6, King Street, Cheapside, against Mr. S. Smirke, an architect and surveyor, carrying on business at Craig's Court, Charing Cross, to recover £50 8s., one year's ground rent of certain houses owned by the defendant on the Bifrons Estate, Barking, Essex, for professional services rendered.

The defendant was the freeholder of the estate in question, and being desirous of building some cottages on it, asked the plaintiff whether he knew of a builder who would undertake to build 24 cottages at £100 each if he advanced £70 per cottage, the balance to be paid by means of ground rents. Plaintiff introduced a builder named Harvey to the defendant, and as the result of certain negotiations which ensued, Harvey built the cottages, and the plaintiff's claim was in respect of the introduction thus effected.

The plaintiff in his evidence said that the arrangement between himself and the defendant was that he (plaintiff) was to have the first year's ground rent of

the houses, which was £2 2s. each. A number of witnesses were called to prove that this was the universal custom in such transactions. The defendant denied that he had made any such arrangement.

The jury, however, found for the plaintiff for the full amount claimed.

Counsel for the plaintiff: Mr. Lewis Glyn; counsel for the defendant: Mr. Wildey Wright.

Waterer v. Horrell.

Chertsey County Court, March 7, 1889.—Before his Honour Judge Lushington.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 160.

Property put up to auction but subsequently sold by private contract by principal—Commission due.

Messrs. Waterer and Sons, the well-known firm of auctioneers at Chertsey, here sued Mr. Horrell, builder, of Addlestone, for £32 10s. commission and out-of-pocket expenses attendant upon their offering for sale, by public auction, some property belonging to defendant, who, on entering the box, said he admitted all the claim with the exception of the commission charged. It appeared that the property was duly advertised and offered for public sale, but failed to reach the reserve, being afterwards sold by defendant to a Mr. Smith. This person was called and deposed that he had offered defendant a price for the property before it was put up for sale. The defendant asserted that the property was "solely sold" by himself to Mr. Smith for £675 before it was put up for auction.

His Honour observed that it was clear that Mr. Waterer had a great deal to do with the sale, and that Smith's name was given him as a buyer, and gave judgment for plaintiffs for the full amount.

Davis v. Dent.

High Wycombe County Court, March 5, 1889.—Before his Honour Judge Whigham and a Jury.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 160.

Revocation of authority to sell.

In this case the plaintiff was an auctioneer carrying on business in London, and he sought to recover from the defendant £7 10s. commission on finding a pur-

chaser for him of the Masons' Arms public-house at Wycombe, of which the defendant was then the tenant. The plaintiff had charged 5 per cent. commission on £150, which was the sum the defendant obtained for his business. The plaintiff had an agent at Wycombe, named Taylor, and he and Dent came into communication, the result being that Dent put the Masons' Arms into the hands of the plaintiff to sell. The plaintiff found a purchaser, but the negotiations entered into were not carried out, and nothing came of the matter. The defendant then requested the plaintiff to find another customer for the business, which he did, and the business was eventually sold to a Mr. Matthews for £150. The plaintiff had given an order to view the house to Mr. Matthews, but the defendant subsequently declined to allow the plaintiff to complete the necessary arrangements for the purchase. Taylor in the meantime had a disagreement with the plaintiff, and Taylor and the defendant laid their heads together to do the plaintiff (as he put it) out of his commission, Taylor carrying out the necessary arrangements incidental to the transfer of the business, after the plaintiff had introduced the purchaser.

The plaintiff in cross-examination stated that he first had a communication about selling the defendant's business in November. He advertised it several times, but he could not give the dates. He received £20 deposit from Mrs. Morell, and in consequence of that his clerk took an inventory. He returned to Mrs. Morell £14, and retained £5 for his expenses. The negotiations fell through. On December 5 he wrote the defendant a letter (which was read in Court), in which occurred the following sentence: "I sent the agreement for the sale of your house for you to sign, and as you refused to do so you are perfectly at liberty to sell your house to anyone whom you please." This letter was in reply to one he received from the defendant, dated December 3, in which the defendant said he "cancelled all business" with witness. At that time witness did not wish to have anything further to do with the matter, but he did not understand that his position as agent was at an end. The defendant never told him that he would have nothing more to do with him.

A clerk in the employ of the plaintiff deposed that on November 27 he came down to the Masons' Arms,

and on the following day he took the inventory produced for Mrs. Morell. The defendant, however, declined to sign the agreement, saying that it was too stringent. Witness gave an order to view the house to Mr. Matthews on January 8.

The defendant, Arthur Dent, said that in November last he was the landlord of the Masons' Arms, Wycombe. During the month he had an interview with Taylor and the plaintiff in reference to selling the business, and there was a negotiation with a Mrs. Morell, but it was not completed. He wrote to the plaintiff on December 3, asking him what he was going to do in the matter, and he received a letter dated December 5, in which the plaintiff said that as witness refused to sign the agreement in the case of Mrs. Morell, he was perfectly at liberty to sell his house to anyone whom he pleased. On December 13, witness was at the station when the plaintiff arrived by train, and they had a conversation together. Witness told the plaintiff that he "sold him a nice little game," by holding the whole of Mrs. Morell's deposit and not giving witness any of it. Witness on that occasion did not ask the plaintiff to try and find him another customer for the house. On January 9 he saw the plaintiff again, and told him that Mrs. Matthews had been down. He produced the order to view, and told the plaintiff that he should have nothing more to do with him. Mrs. Dent said that she remembered the plaintiff and his agent coming to her house. She heard her husband say to the plaintiff that he would have no further transactions with him. The house was subsequently sold to Mr. Matthews, who also gave evidence on behalf of the defendant, in whose favour a verdict was ultimately given.

Mr. J. Bliss appeared for the plaintiff; and Mr. D. Clarke for the defendant.

Brightwell v. Parry.

Oswestry County Court, March 16, 1889.—Before his Honour Judge Arundel Rogers.

Reported *ESTATES GAZETTE*, Vol. xxxiii., p. 200.

A present in lieu of commission.

The plaintiff, a commission agent, carrying on business in Shrewsbury, sought to recover the sum of £55 for commission, in getting the defendant, Mrs. Eliza-

beth Parry, a customer for the purchase of the Plough Inn, and the Victoria Club House, Beatrice Street, Oswestry. The plaintiff had introduced Messrs. Hall and Co., of Wem, who purchased at £2,200, and the claim was for commission on that amount at the rate of $2\frac{1}{2}$ per cent., Mrs. Parry, it was alleged, agreeing to pay that amount if plaintiff secured her a customer.

The plaintiff's evidence was to the effect that Mrs. Parry told him that she wanted to sell her public-house, and he took down the particulars, the public-house being let at £60 a year, and she wanted £1,780. She also wished to sell the Victoria Club House adjoining. He entered into negotiations with Mr. Trouncer to buy the property, and met him at Oswestry. He asked Mrs. Parry what she wanted for the property, and she said £1,780 for the Plough Inn and £550 for the club house; but Mr. Trouncer declined to have anything further to do with it. He ultimately met with Mr. Hall, of Wem, and he offered witness £2,200 for the property, and it was sold to Messrs. Hall and Co. for that amount, the money to be paid in July, 1890.

On the other hand, Mrs. Parry, the defendant, said that Mr. Hall bought the house, the money being payable in July, 1890. After the sale to Mr. Hall, she never agreed to give any commission, but told plaintiff she would give him £5 when the money was paid. She agreed to give Mr. John Jones, the auctioneer, of Oswestry, $2\frac{1}{2}$ per cent. if he sold the property by auction; but that was to include advertising and expenses. Joseph Eccleston, clerk, Oswestry, said he was present on November 17, with Mrs. Parry and Mr. Brightwell. Nothing was said about commission. Mrs. Parry said if Mr. Brightwell sold her the property she would give him £5 on payment of the purchase money. Mr. Hall, brewer, Wem, said that he bought the premises for £2,200, and gave Mr. Brightwell £5, and he wanted £5 more, as he said he could get nothing from Mrs. Parry. The money was to be paid on July 1, 1890, and on this evidence it was submitted for the defence that it was evident that the bargain was for £5, when the purchase money was paid, and not $2\frac{1}{2}$ per cent.

His Honour said that he should have to give judgment for defendant, but he thought the plaintiff was entitled to something, and defendant agreed to pay plaintiff the £5 now, instead of in 18 months' time, each party to pay their own costs.

Mr. F. W. Williams appeared for the plaintiff, and Mr. Douglas for the defendant.

Ashton v. Bailey.

Salford Hundred Court, March 21, 1889.—Before Mr. H. W. West, Q.C., Judge.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 200.

Dispute as to amount of commission—Agent retaining money paid to him on account.

The plaintiff, Miss Ashton, here sued Mr. Bailey, business transfer agent, Market Street, Manchester, for £17 odd, a portion of the money paid to the defendant as the agent for the sale of a business.

It appeared that in June, 1888, she was desirous of selling her business in Moss Lane East, and engaged the services of the defendant to secure the transfer, the original agreement being that a commission of £5 should be paid on the first £100 of the purchase money, £2 10s. on the second £100, and $1\frac{1}{4}$ per cent. on the price of the stock. The business was at first advertised with no result, and subsequently Miss Ashton had an interview with Mr. Bailey, when it was agreed that any amount for which the business might be sold over £150 should belong to the defendant as his commission. The defendant wrote the terms of this new arrangement, as the plaintiff supposed, with a lead pencil on the back of the original memorandum, fixing the rate of commission, but on her arrival home Mr. Clarke, the manager, pointed out that the price put down was only £130. Thereupon she informed the defendant that she would accept no such terms and would go back to the original understanding. The words on the back of the memorandum were then erased. In September one or two interviews took place at the shop, at which both parties to the suit and a Mr. Telfourd, who desired to purchase the business, were present. In the course of the last interview, at which Miss Ashton said she wanted £160 for the business, Mr. Telfourd made an offer of £140, and the defendant said that to induce a transfer he would forego £5 of his commission. Miss Ashton was then appealed to to make some concession, and ultimately fell in with an arrangement to take the £140. Of this sum £20 was paid to the defendant on account, and it was to recover the part of this amount

that she alleged to be due to her that plaintiff brought the action.

For the defence it was urged that it would be unreasonable to suppose that the defendant made an offer to forego £5 of his commission when, according to the plaintiff's story, the total sum he was to receive for his three months' work in connection with selling the business was only to be £7 12s. The real facts of the case according to the defendant were that Miss Ashton, in the first instance, wanted £160 for the business, that it was finally agreed that the defendant should receive £30 commission and bear the whole expenses of the transaction.

In his evidence the defendant stated that after advertising the business for a time without result he asked Miss Ashton what was the lowest price she would take for it, and she ultimately decided that she would take £130, and agreed to the arrangement, the terms of which were entered on the back of the memorandum to the effect that the business was to go for £160, the commission to be £30.

At this point the Recorder called the defendant's attention to the existence of his agreement to take £5 on the first £100, and the result of his observations was a statement by the defendant's representative that if the jury were satisfied that the original agreement was to be adhered to it was no use for him to try to carry the case further.

The jury intimated that they were of that opinion, and the Judge said he agreed with their view. The verdict was accordingly entered for the plaintiff.

Mr. Yates appeared for the plaintiff, and Mr. McKeane for the defendant.

Clark v. Haines.

Lord Mayor's Court, March 22, 1883.—Before the Assistant Judge and a Jury.

Reported ESTATES GAZETTE, Vol. xaxlii., p. 221.

Agent retaining deposit—Claim for money had and received—Counter-claim for commission.

The plaintiff, Mr. E. H. Clark, a restaurant proprietor, residing at Camden Road, sued the defendant, Mr. J. J. Haines, an auctioneer and commission agent, carrying on business in Red Lion Square, Holborn, to

recover £32, money had and received by the defendant on behalf of the plaintiff.

The defendant set up a counterclaim for £17 10s., commission on the sale of a restaurant formerly the property of the plaintiff.

The plaintiff was formerly the proprietor of a restaurant situate at Castle Street, Falcon Square. Being desirous of disposing of the business he applied to the defendant to find him a purchaser. Defendant did so, and the business was sold for £300. The terms agreed upon between the parties were that the defendant was to be paid 5 per cent. on the amount of the purchase money. Upon the sale being effected the purchaser paid defendant £30 as a deposit, and subsequently paid the balance to the plaintiff. Afterwards the defendant sent in an account for £22 11s. 6d. for his services. This the plaintiff refused to pay, on the ground that the charge was excessive, and as he was unable to obtain payment of the £30, he now sued for that amount, together with £2 handed to the defendant for the purposes of advertising the business.

The defence was that besides introducing a customer defendant had made an inventory of plaintiff's goods, for which he was entitled to £3 3s., in addition to which he had several times attended at the solicitor's office, and had accompanied the plaintiff to Harringay Park for the purpose of inspecting some other property which he contemplated purchasing. The plaintiff's case was that this work was included in the agreement.

The jury found for the plaintiff for £15 4s.

Counsel for the plaintiff: Mr. Daniels; counsel for the defendant: Mr. Clavell Salter.

Prebble v. Tufnell.

Lambeth County Court, April 2, 1889.—Before his Honour Judge Powell.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 241.

Commission recoverable where there has been no default on the part of the agent, but the principal revokes his authority.

The plaintiff in this action was an architect and surveyor, carrying on business at Brixton, and the defendant resided at Portsmouth, and acted as agent for Miss Robinson, a lady well known in the town. It appeared that Miss Robinson had purchased some land, on

which she proposed to erect buildings on a similar system to those already existing. For the purpose of carrying out this scheme it was found necessary to raise some money by a mortgage on the property, and accordingly the plaintiff was brought into communication with the defendant. It was agreed that if the plaintiff succeeded in procuring the money he should be paid a commission of 1 per cent. on the amount raised. The sum proposed to be raised was £16,000; but the plaintiff, on calculation, did not think the security was sufficiently good, and recommended that £10,000 should be raised on the old buildings, and the additional £5,000 on the new ones when they were completed. This proposal was adopted, and the plaintiff proceeded to negotiate for the loan. But before negotiations were completed, the defendant revoked the plaintiff's authority. Under these circumstances the plaintiff claimed £21 as due to him for his services, which the defendant refused to pay on the ground that the money had not been raised. Evidence was called on behalf of the plaintiff to prove that the money would have been forthcoming had the matter been proceeded with.

The learned Judge said he was of opinion that under the circumstances the plaintiff was entitled to recover, inasmuch as it was not from his inability to raise the money that it was not obtained, but from the defendant's revocation of his authority to raise it. If A.B. asks C.D. to procure him a loan and C.D. finds a lender, but A.B. breaks off the negotiations and refuses to take the money, can C.D. sue for remuneration for services which have become abortive through no fault of his own? This was practically the question in the case, and he must give judgment for the plaintiff, with costs.

Stutely v. Weller.

Sheerness County Court, April 15, 1889.—Before his Honour Judge Selfe.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 280.

Property taken out of the hands of one auctioneer and placed with another—Alleged custom of the trade—A custom must be general and notorious—Revocation of authority.

This was an action brought by Mr. Edward Stutely to recover £39, auctioneer's commission.

It appeared that the plaintiff was engaged by two

gentlemen named Kasner and John to sell certain leasehold property, Nos. 68, 70 and 72, High Street, Mile Town, and a plot of land in Hope Street, Sheerness, upon certain terms. The plaintiff advised as to the reserve price, measured the property, drew the particulars, issued the preliminary advertisements, and did everything that was required. The sale for no assigned reason, was taken out of his hands, and the property was sold by Messrs. Marler and Bennett, of Sloane Street, S.W., one of whom was a relative of the parties. Plaintiff's measurements and particulars were used by these gentlemen, as was also the reserve price he put upon the property. The price realised for the property was £1,560, which was £10 in excess of the reserve, and it was argued for the plaintiff that he was entitled to his full commission just as if he had disposed of the property. He stated that he would call two auctioneers of experience who would say that it was the custom of the profession to charge full commission if an auctioneer was properly instructed and the sale was withdrawn from his hands.

The plaintiff deposed he had had 25 years' experience as an auctioneer, and had been a licensed auctioneer for 22 years. In April last year he met Mr. Kasner and Captain John by appointment at the Britannia Hotel, and was employed by them (they acting as agents for the defendant) to sell certain leasehold property. He was to receive 2 per cent. commission on the price obtained, and £7 the costs of the sale. He advised a reserve price of £1,500 on the property. An agreement was duly drawn up as to his charges, and he was instructed to get out the particulars and issue the preliminary advertisement. After the first issue of the preliminary advertisement, he received a letter from Messrs. Edwards and Son, solicitors to one of the beneficiaries under the will, in consequence of which he called on Mr. Brightman, the solicitor for the vendor. He had received no instructions from Mr. Edwards, and therefore did not consider himself in any way bound by his letter. Mr. Brightman communicated with the defendant, and the result was he was instructed to withdraw the advertisement, and nothing further was said about the matter. A fortnight or three weeks after Messrs. Marler and Bennett offered the property for sale. He knew of no other reason for the change of auctioneers, except that, as he had heard, Mr. Bennett was related to one of the parties interested. Before this

he had measured all the properties, and had prepared the particulars. He was asked to let Marler and Bennett have them, and he did so, together with a rough plan of the property. Marler and Bennett sent him a dozen bills to be distributed and his name was at the bottom as one of the parties from whom particulars and conditions of sale could be obtained. The particulars on the bill were not quite so full in detail as he prepared them, as he advised the sale in three lots, but it was afterwards decided to sell the property in one lot. He attended the sale of the property at the Mart, London, and saw several Sheerness persons present, to some of whom he had previously introduced the property. He could not say whether any of them made bids; the bidding was done by a nod of the head. The property was sold for £1,560. It was the custom of the trade when an auctioneer was instructed to sell property, and had prepared particulars, advertised it, etc., for him to receive commission in full if it were subsequently taken out of his hands and sold by another auctioneer. He had never had such a case himself, but had read of them.

Cross-examined by counsel, the plaintiff said no terms were fixed in case of the property not being sold, as he had clients who he was sure would buy it. When the sale was taken out of his hands, if he remembered rightly, he said to Mr. Brightman, "What about my commission?" He heard from Mr. Brightman Mrs. Weller had asked whether she would have to pay two auctioneers, and he told Mr. Brightman she would have to pay him. In October the defendant offered him two guineas, which he refused to accept. He would not give them the particulars for that sum, let alone advising them as to the reserve price. He thought Mr. Bennett was going to do the work cheaply on account of being a relative. He sent in his account when the settlement took place in connection with the property.

Mr. Henry Charles Wood (of the firm of Wood and Kirby, Bedford Row, London) an auctioneer of 12 years' experience, and also Surveyor for Tooting, said he considered that under the circumstances narrated by Mr. Stutely, the auctioneer was entitled to the whole of his commission, in accordance with the custom of the trade. He had had no case himself of such a description, but if he had been treated in such a way he should have claimed in full.

Mr. Alfred T. Randall said he had had 25 years' ex-

perience as an auctioneer in London and Chatham. In such circumstances as Mr. Stutely had detailed, the auctioneer was always paid in full. The usage was well known among solicitors and auctioneers.

For the defence it was contended the £5 which had been paid into Court was quite sufficient to meet all the claims Mr. Stutely had upon the defendant. The defendant had a perfect right to revoke her authority for the sale, and she was only liable for the value of the work which had been done, and for any expenses incurred by the plaintiff. He submitted that the idea of charging full commission on the amount realised did not occur to the plaintiff when he was in communication with Mr. Brightman, or he would have mentioned the fact. By not doing so he had abandoned his right to claim full commission. The defendant had never objected to pay a reasonable sum for his services. The Judge was asked to say in accordance with the decision of Lord Denman in "*Rainy v. Vernon*" that the custom was so notorious that the party entering into the agreement must have known it, but even the plaintiff's own witnesses did not say the custom was known beyond the profession and among solicitors.

The learned Judge summed up at length. He did not think the plaintiff was entitled to full commission, as the purchase was not obtained through his intervention, the sale being withdrawn at an early stage of the proceedings. If a purchaser was introduced to the property by the advertisements, etc., of the auctioneer, and instead of going to the auctioneer, went direct to the vendor and purchased it before the sale, then he considered the auctioneer would be entitled to full commission. In the present case he considered the defendant had a right to revoke the sale, and the question arose as to the amount of compensation Mr. Stutely was entitled to for his services. The defendant first offered the plaintiff the miserably inadequate sum of £2 2s. and had now paid £5 into Court. He did not consider £5 by any means sufficient remuneration for the work Mr. Stutely had performed. It should be remembered that the greater portion of the work was done by plaintiff. His measurements and particulars were adopted—thus saving Marler and Bennett the necessity of sending down from London to do this work—and the defendant had also the advantage of a local auctioneer's opinion as to the reserve price. There was therefore

very little to do except to offer the property at the auction mart and knock it down to the highest bidder. He should therefore give judgment for the plaintiff for £15.

Mr. A. R. Norman appeared for the plaintiff, and Mr. E. Layman was counsel for the defendant.

Lumley v. Beckstein.

Westminster County Court, May 17, 1889.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 371.

Alleged agreement to pay auctioneers a fee "whether business was done or not."

This was an action brought by Messrs. E. and F. Lumley, of St. James's Street, Piccadilly, the defendant being a manufacturer of pianos in Berlin. The claim was for £25 work done.

A member of the plaintiffs' firm deposed that in the latter part of 1887 the defendant's manager, a Mr. Max Linlar, called at his office, and intimated that a Mr. Beckstein, whose London manager he was, was desirous of purchasing premises in the West-end of London for the purpose of starting business in that locality. Instructions were then given to the plaintiffs to do their best to procure suitable premises. Acting upon these instructions they went to a great deal of trouble, introducing Mr. Max Linlar to a number of different premises which they thought likely to suit, among which was the Brunswick Hotel, Hanover Square, the price of which was £26,000. It was at that time agreed between the plaintiffs and Mr. Linlar that a minimum fee of 25 guineas should be paid to the plaintiffs for their trouble, whether any business was done or not, and if the plaintiffs succeeded in finding a building which the defendant approved of, they were to be paid a sum of 180 guineas, in which case the 25 guineas would not be charged. The defendant's manager expressed his satisfaction with the Brunswick Hotel, and thought it a most suitable building, but considered the price rather high. He would, however, he said, write to his principal in Berlin, giving particulars of the building, and would let the plaintiffs know the result. Shortly after that the plaintiffs received a communication from the defendant to the effect that he had purchased new pre-

mises in Berlin, and had given up the idea of opening up business in London. It was not until a year afterwards that the plaintiffs sent in an account for the 25 guineas according to agreement. This account was returned shortly afterwards by the defendant, who repudiated the claim altogether.

In cross-examination, the witness said that it was a usual charge for house agents to make. There were many agents in London who would not go out of the office unless a preliminary payment or retaining fee was made, and 25 guineas was the usual charge.

For the defence, Mr. Max Linlar deposed that he was the London agent to the defendant. It was perfectly true he went to the plaintiffs and gave them the instructions mentioned. He also undertook to pay them the sum of 180 guineas provided they found him premises which would be suitable for his business. As to the sum of 25 guineas, he never dreamed of making such a promise; what he did say was that if suitable premises were found it would be advisable to employ an eminent architect to report upon the stability of the buildings, and for that he would be willing to pay 25 guineas. That, however, was never done, so his principal declined to pay.

The Judge said in his opinion the claim was absurd in the extreme. He had never before tried such an action. It was most improbable that a man would undertake to pay 25 guineas without any consideration. The verdict would be for the defendant, with costs.

Wharton v. Smith.

Lord Mayor's Court, May 29, 1883.—Before the Assistant Judge and a Jury.

Reported *ESTATES GAZETTE*, Vol. xxxiii., p. 394.

An auctioneer acting as agent must accept his principal's limit as to price.

In this case the plaintiff, Mr. H. G. Wharton, auctioneer and surveyor, of 1, Gresham Buildings, sought to recover the sum of £20, being commission on £800, the price agreed upon as the purchase-money of ground rents belonging to the defendant, and arising out of property at Fulham. He called as a witness Mr. Osman, who said that at the time of the transaction in question he was acting as solicitor for the defendant. That

gentleman wished to sell some ground rents, and he asked witness if he could get him £800 clear of all expenses. At the time witness had a little business with the plaintiff, and he mentioned the matter to him, the price being put at £800 net. The plaintiff, it appeared, had had an offer of £820, being £800 and £20 his commission.

For the defendant it was submitted that upon this evidence there was no case to go to the jury, as according to the plaintiff's own showing the defendant wanted £800 clear of all expenses, and the highest offer was only £820, from which had to be deducted the plaintiff's commission and solicitor's expenses, which did not leave a clear £800. As a matter of fact that offer was not accepted, and no sale was effected. After some discussion the jury were asked to express an opinion as to the terms agreed upon between the parties, and they found that the defendant arranged with the plaintiff to accept £800 clear of all expenses, and on this finding judgment was entered for the defendant, with costs.

Mr. L. E. Glyn was counsel for the defendant.

Copping v. White.

Westminster County Court, May 27, 1889.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 394.

A seller justified in making his choice between two buyers—One house agent working for another.

In this case the litigants were both estate agents and auctioneers, and the circumstances were somewhat uncommon. The plaintiff carried on business as a house and estate agent, at 50, Green Street, Grosvenor Square, and the defendant was also a house agent, a member of the firm of White, Druce and Brown, of 9, Brooke Street. The defendants being desirous of disposing of the lease of the house, No. 33, Green Street, communicated with the plaintiff, and offered to pay him a commission of 5 per cent., that being the usual basis upon which one house agent did work for another if he found a purchaser. Subsequently the plaintiff did obtain a client, who was prepared to accept the defendant's terms. The defendant accepted the client, but afterwards, for some reason or other, declined to complete. Therefore, the plaintiff having fulfilled his part of the

contract, in procuring a willing tenant, now claimed the commission due to him, as it was no fault of his that the matter was not completed.

The plaintiff, Mr. William Copping, was called, and said that in the early part of last year the defendant asked him to assist them to find a purchaser for the house in question, which he undertook to do on the terms stated. Subsequently he introduced to the defendant a Mrs. Parker, who was willing to take over the lease. The defendant agreed to accept Mrs. Parker's offer of £275 as soon as the assignment was effected. On the following day the defendant's solicitors, Messrs. Boyce and Son, wrote and suggested that instead of assigning the original lease to Mrs. Parker, it would be better to prepare an under-lease. The plaintiff proceeded to give evidence as follows: I replied immediately to the effect that the terms had all been agreed between us, and that I should decline to alter them. I also said that the proposed purchaser was a thoroughly reliable person. On the following day I received another letter from Messrs. Boyce, stating that they thought my objections were groundless, and that an under-lease could in no way be detrimental. Therefore their clients would decline to depart from the suggestions made. On the following day I called on Messrs. Boyce, and, after considerable discussion, it was arranged that the lease should be assigned on the terms which had been previously agreed. I gave Messrs. Boyce two references, and they then said they would put the contract in hand at once. On April 1 I again called on them to see how the matter was proceeding, and was astonished when they told me that they had felt constrained to advise their client to accept another offer. I complained very much of the treatment to which I had been subjected. In reply to my question, Mr. Boyce said the offer which had been accepted was not so good as the first one. I went to Mr. White directly and complained of his treatment, to which he replied that he supposed he could do what he liked with his own house, and if he could get a better price for it he had a right to do so. I replied that Mr. Boyce had told me the price was not so good, to which Mr. White replied, "Mr. Boyce knows nothing about it."

Cross-examined, the plaintiff stated: I did suggest that the assignment should be drawn up in Mrs. Parker's name and not that of her husband. I did so because

the husband wished it, as Mrs. Parker had a separate estate. It was not suggested that Mrs. Parker might get into difficulties, and be unable to pay the rent. No such observation was ever made to me, or in my hearing.

His Honour the Judge said that where an authority was given under a contract to buy or sell, and that authority was afterwards revoked, the plaintiff would be entitled to recover, but there was no evidence in this case to show that that was so. There appeared to be two persons willing to take the house, one of whom was introduced by the plaintiff, and the other procured by the defendants themselves. He thought the defendants were quite justified in making their own choice. The plaintiff would, therefore, be non-suited, with costs.

Counsel for the plaintiff: Mr. Moreton Smith; counsel for the defendant: Mr. Tyrell Paine.

Theobalds v. Salaman.

Lord Mayor's Court May 23, 1889.—Before Sir Thomas Chambers, Q.C., and a Jury.

Reported ESTATES GAZETTE, Vol. xxxiii., p. 419.

Rate of commission where builder found and ground rents created
—Custom of the profession.

This was an action brought by Mr. W. Theobalds, an architect and surveyor, of 26, Budge Row, against Messrs. Salaman, of 46, Monkwell Street, land owners, to recover £150, the amount of a year's ground rents of an estate known as Beech Cottage Estate, Brook Green, Hammersmith, which, plaintiff alleged, he was entitled to as commission for introducing a purchaser of the estate to the defendants. Defendants denied liability, and in the alternative paid £52 10s. into Court. The plaintiff had been in the habit of introducing builders to the defendants for their estates, and alleged that he received instructions from them to find a purchaser for the estate mentioned, no fixed commission being mentioned in respect of that estate. He consequently put himself into communication with various builders, and ultimately introduced a gentleman named Howell to the defendants. The result of the introduction was that an agreement was entered into between Howell and the defendants, whereby the former undertook to build houses and to create ground rents, paying the defendants £150 a year for them. Plaintiff now claimed the first year's ground rent as his commission, and called several witnesses to prove that this was the

usual custom in such cases, including Mr. R. G. Worley, surveyor, of 46, Cannon Street; Mr. A. C. Richards, auctioneer, of 15, Walbrook; and Mr. Von Holfen, in the offices of Messrs. Debenham, Tewson, Farmer and Bridgewater.

The defence was that the services of the plaintiff had not been instrumental in bringing about the purchase of the property, and that some time prior to the plaintiff's introduction Mr. Howell himself had been in negotiation with the defendants for the purchase of the land. This was admitted by the plaintiff, but it was contended that these negotiations had fallen through, and that through the intervention of the plaintiff he had been induced to increase his offer of £2,800 to £4,500, which sum he ultimately paid for it.

Mr. Walter Stair, architect and surveyor, 9, Queen Victoria Street, said as a rule the commission was a question of arrangement, but he should consider in this case 50 guineas reasonable. Half-a-year's rent was a usual commission, and a year's was the maximum.

Mr. Richard Ellis (Ellis and Son), 49, Fenchurch Street, said that commission varied according to circumstances. In this case he should say that half-a-year's commission would be quite ample.

Mr. B. Tabberer, district surveyor for Greenwich, agreed with Mr. Ellis.

Mr. Lang, of the firm of Jones, Lang and Co., auctioneers and surveyors, King Street, Cheapside, said that in a ground rent of this kind the commission would vary from half-a-year to a year on the first £100, and half-a-year on the remainder. The commission on £150 a year would vary from £75 to £125.

The jury found a verdict for £150, the plaintiff's claim in full, and judgment was delivered accordingly.

Counsel for the plaintiff: Mr. Lewis Glyn; counsel for the defendants: Mr. Bassett Hopkins and Mr. Lazarus.

Gill v. Burbidge.

Marylebone County Court, June 27, 1889.—Before his Honour Judge Stonor.

Reported *ESTATES GAZETTE*, Vol. xxxiii., p. 514.

Indirect introduction of purchaser—Green v. Bartlett.

In this action Mr. Edwin Gill, auctioneer, of Kilburn, sued the owner of 52 and 54, Clifton Hill, St.

John's Wood, to recover £20, amount of commission on the sale of the house No. 54, Clifton Hill, for £700.

The plaintiff's case was that in September, 1888, the defendant had instructed him to find tenants for the houses, Nos. 52 and 54, Clifton Hill. In the beginning of October a Mrs. Magnus, among others, called on plaintiff to know particulars of No. 54. She was informed that the rent was £55, but offered £50 on condition that repairs were done. The defendant would not, however, lay out so much money, so Mrs. Magnus, through plaintiff, offered to buy the house. But defendant, by letter, refused to sell then. The negotiations, however, did not drop; several letters passed between plaintiff and defendant, and between plaintiff and Mrs. Magnus, defendant again writing that she had no intention of selling. But in January, 1889, Mrs. Magnus, having obtained of the plaintiff defendant's address, persuaded her to sell, and the actual sale took place early in February. The plaintiff having learnt that the price was £700, sent in his account for £20 commission. This the defendant refused to pay, and this action was brought.

Mr. Gill, Mr. Harry Mead, his manager, and George Hubbard, clerk, gave evidence.

In cross-examination, Mr. Gill admitted that he had called on Mrs. Magnus, and that she denied owing her introduction to him, but said that she obtained defendant's address from a caretaker. There was, however, an entry in the call book to the effect that Mrs. Magnus had called and had been given the vendor's address.

The plaintiff's counsel having quoted the case of "*Green v. Bartlett*," it was contended on the other side that as Mr. Gill had no instructions to sell, and that as Mrs. Magnus denied having been introduced to the vendor by the plaintiff, the latter could not claim payment for doing what he had no authority to do. It was urged that "*Green v. Bartlett*" did not apply, as in that case the auctioneer had instructions to sell, and a case was quoted where the auctioneer had instructions to sell, and had introduced a person who thought of buying, but the matter dropped through, but was renewed after some months and the purchase took place. In the meantime the agent had had his authority to sell revoked, and it was held that he had no claim for commission.

The defendant gave evidence in support of her case.

His Honour, in giving judgment, said the plaintiff must recover. The facts seemed to him to be that through the plaintiff's action the purchaser was introduced to the vendor; and, therefore, he should give judgment for the plaintiff for the full amount claimed and costs.

Mr. Scarlett was counsel for the plaintiff; and Mr. Russell appeared for the defendant.

Harman Brothers v. Nowell.

City of London Court, July 9, 1889.—Before Mr. Commissioner Kerr and a Jury.

Reported *ESTATES GAZETTE*, Vol. xxxiv., p. 54.

Loan not really procured by agent.

This was a claim by Messrs. Harman Brothers, auctioneers, of Aldermanbury, for £4 4s. commission for procuring a mortgage loan.

It appeared that in February, 1887, the defendant entered into a contract with the plaintiffs to buy a house at Stoke Newington, for £520, and paid £5 deposit. By the agreement the plaintiffs were to procure a mortgage for £400, the defendant representing that he could obtain the other £120. He was unable to do so and the contract fell through. A fresh contract was then made verbally, the plaintiffs undertaking to procure the £520, and it was for doing this that the plaintiffs sought to recover four guineas commission.

Mr. Harman gave evidence to the effect that after the first contract fell through it was entirely through him that the £520 was obtained. He wrote several letters and had many interviews on the subject. Defendant told him that he did not want to go to his solicitors himself and therefore witness went to them (Messrs. Boxall and Boxall, of Chancery Lane), and arranged the mortgage.

Mr. Boxall stated that after several interviews with the plaintiff a mortgage for £520 was carried out, the money being advanced by a client. It would not have been done had it not been for Mr. Harman.

The defendant stated that he himself went to Mr. Boxall and arranged the loan. Mr. Boxall wanted to know particulars as to the property, and he therefore asked Mr. Harman to see him. He never entered into any verbal or any other agreement but the first one with

the plaintiff. The £120 was ready at any time, but it never was asked for. He admitted that the £520 was got for him, but it was by his own instructions after the plaintiffs failed to get the £400.

The jury found for the defendant.

Mr. Tattershall appeared for the plaintiffs, and Mr. Armstrong for the defendant.

Harris v. Luckes and others.

Monmouth Assizes.—July 22, 1889.—Before Baron Pollock.

Reported ESTATES GAZETTE, Vol. xxxiv., p. 78.

Sale not brought about by original introduction—Chain broken.

This claim was originally one for £1,500 for work and labour done, and services rendered by the plaintiff to the two sets of defendants (Mr. Luckes, a commission agent at Bristol, and Messrs. Davies and Co., also commission agents at Bristol) in reference to the sale of a Newport brewery at $2\frac{1}{2}$ per cent. on £50,000, but it turned out afterwards that the price was £65,000, so that the claim was increased to £1,625 with interest. On April 29, 1888, Mr. Luckes wrote to the plaintiff asking if he could open negotiations for the sale of any breweries in his district, as a client of his (Luckes) wanted to get hold of one large one or several small ones, and had a capital of about £100,000 or £200,000 to put out. If he (plaintiff) could secure any they might make a few hundreds each. The plaintiff saw Mr. Searle, of the Castle Brewery, early in September, 1888, and learnt that he might be willing to dispose of his business, and on September 15 Mr. Harris wrote to Mr. Luckes that "one of the principal breweries in South Wales would be willing to sell or transfer to a company if arrangements quite satisfactory to them could be made." Subsequently Mr. Harris wrote that the books of the firm would be open to inspection, and Mr. Luckes wrote back afterwards agreeing to pay him 1 per cent. for introducing the business a month after the allotment of shares. Mr. Harris then disclosed to Mr. Luckes the name of Messrs. Searle and Herring, of the Castle Brewery, Newport, and stated that Mr. Searle was the person who would have to be consulted. Up to that time neither Mr. Luckes nor Davies and Co. knew the name of the firm, and it was contended that it was a clear case of introduction to them on the part

of the plaintiff, Mr. Harris, who also informed them that Messrs. Searle and Herring did about 200 barrels per week and sometimes more, and that they had about 50 tied houses. Subsequently Mr. Harris wrote to Mr. Luckes stating that his (Mr. Harris's) friend, Mr. Russell Evans, who was acting in the matter, thought he (Mr. Harris) ought to get $2\frac{1}{2}$ per cent. for his introduction of the business to Mr. Luckes, and then thought that the defendants ought to get a handsome margin out of the transaction. It appeared that both the defendants were receiving 5 per cent. from Mr. Russell Evans for carrying the transaction through. Mr. Luckes, however, wrote to Mr. Harris asking him if he would prefer receiving the 1 per cent. certain or joining in a participation of 6 per cent. divided between five. On October 27 a letter was written to Mr. Harris stating that in consideration of having introduced to the defendants the Castle Brewery they agreed to pay him $2\frac{1}{2}$ per cent. This agreement, it was found, was unstamped, and to make it admissible the penalty of £10 was paid. It was alleged that ultimately the defendants went behind Mr. Harris's back and treated with Messrs. Searle and Herring direct. They made a large sum of money, but did not offer to pay plaintiff a single farthing.

The plaintiff in cross-examination admitted that he did nothing in the matter after November 4. He understood that Mr. Russell Evans was broker for the syndicate. He examined Messrs. Searle and Herring's books, but contented himself with looking at the balances. He saw Mr. Searle about six times. It was he who went to Mr. Searle, and not Mr. Searle to him.

Mr. Richard Searle, senior partner in the firm of Searle and Herring, said the plaintiff first spoke to him about the sale of the brewery, but it was Mr. Willey the Newport manager of the National Bank of Wales, who introduced him to Mr. Luckes. He and his junior partner declined to sell to Mr. Harris in September. Mr. Russell Evans had nothing to do with the sale, and he did not know the name of Messrs. Davies and Co. before the sale was completed.

In giving judgment, his Lordship said that he considered that the action failed as against Mr. Luckes, and he dismissed him from the action. With regard to Messrs. Davies and Co., if by any continuity of events a contract was really founded upon the original intro

duction, the agent who made that introduction was entitled to recover. But the plaintiff brought the negotiations to an end in November by writing that the brewery would not sell, and when the defendants replied, making further inquiries and suggesting that he (plaintiff) might be able to do something more towards bringing the parties together, the plaintiff did not take the trouble to answer. Therefore, to all intents and purposes, the agency was distinctly broken off, and the judgment would be for the defendants with costs.

Counsel for the plaintiff: Mr. Jelf, Q.C., and Mr. Ram; counsel for Mr. Luckes: the Hon. A. Lyttelton; counsel for Messrs. Davies and Co.: Mr. A. T. Lawrence.

Chilman v. Rowbotham.

Guildford County Court, July 23, 1889.—Before his Honour Judge Vernon Lushington.

Reported *ESTATES GAZETTE*, Vol. xxxiv., p. 121.

Commission on sale of hotel—Custom.

This action was brought to recover £20 which had been paid to the defendants as a deposit by a proposed purchaser of the plaintiff's property, known as the Ship Hotel, Farnham. The defendants admitted having received £20; they had paid £10 into Court, but contended that they were entitled to keep the other £10 for their charges and commission.

Mr. Rowbotham was called, and deposed to receiving instructions from the plaintiff to sell to Mr. Richardson the Ship Hotel, Farnham. In pursuance of these instructions he prepared an inventory, which was afterwards submitted to the parties. It was the custom of the trade that if the purchase went off by default of the purchaser, they were entitled to deduct their expenses from the deposit.

Cross-examined, the witness said he did not know that Mr. Folker was acting as agent for Mr. Chilman previous to his entering into the matter. He did not tell Mr. Chilman that the preparation of the inventory and valuation would be no expense to him. In a conversation with Mr. Folker the latter did not tell him that there was some mistake in the agreement, as his name was not inserted as representing Mr. Chilman.

The plaintiff was then called, and stated that, wishing

to get rid of his hotel at Farnham, he saw Mr. Folker, whom he instructed to prepare an inventory on his behalf, which he did. Witness never instructed Mr. Rowbotham to prepare an inventory for him.

On the question of custom, Mr. John Bullen was called, and said he had previously had many years' experience in the business, but he certainly never heard of the custom spoken of by Mr. Rowbotham of the agent receiving commission if the purchase fell through by default of the purchaser. The agent sometimes charged a small sum—perhaps a guinea—for preparing the inventory.

His Honour then said that upon this evidence he should not allow commission, but he was disposed to allow the defendants a sum of £1 10s. for the expense they incurred. Judgment was then given for £18 10s.

Mr. Ferrell appeared for the plaintiff, and Mr. Eve for the defendants.

Kirk v. Evans.

Queen's Bench Division, October 28, 1889.—Before Baron Pollock.

Reported *ESTATES GAZETTE*, Vol. xxxiv., p. 365.

Sale of land for building purposes—When is commission earned—Custom.

The plaintiff, a surveyor, carrying on business in Mark Lane, City, was employed in April, 1835, to sell a piece of land for building purposes, belonging to the defendant, at Baker Street, Enfield. He found a purchaser in a Mr. Wright, who commenced operations, but, for some reason or other, never completed the building of the 18 projected houses. After a correspondence, the defendant paid some £18 in sums of £10 and £8, to the plaintiff in respect of his commission, and this action was brought in March, 1889, to recover £82, the balance of £100, commission alleged to have been earned. According to the plaintiff's case this was payable as soon as the agreement was signed by the parties, and the above sum was calculated on the basis of one year's maximum ground rent. But the defendant said that no such commission was due until the land had been covered and ground rent had been created for his benefit. There was a strong conflict of evidence on the point as to which custom pre-

vailed, and several architects, surveyors and engineers were called on either side in support of their respective contentions.

At the conclusion of the evidence his Lordship said the case depended on which custom had been established of those attempted to be set up. It must be taken that the defendant had made no admissions in the correspondence to take himself out of the custom. He came to his conclusion not without some difficulty; but regard must be had to the general rule that commission was earned when the contract was obtained. This was the general rule in the case of commercial contracts, and those for the sale of goods, and was quite apart from the solvency of the purchaser or his power to perform his contract. He thought commission did not become due by merely getting a man to sign a paper, but getting a man to do something whereby the landlord was enabled to earn his rent—that is, building the houses. He said this with the full belief that the plaintiff's witnesses had given their evidence honestly. On the whole, therefore, he thought the custom was to pay the commission in these agreements not when the agreement was signed by the parties, but when leases were granted and ground rent accrued after the houses were built. There would be a verdict and judgment for the defendant, with costs.

Counsel for the plaintiff: Mr. R. O. B. Lane; counsel for the defendant: Mr. Bowen Rowlands, Q.C., and Mr. Tatlock.

Taplin v. Barrett.

Queen's Bench Division, November 6, 1889.—Before Mr. Justice Mathew and Mr. Justice Wills.

Reported *ESTATES GAZETTE*, Vol. xxxiv., p. 386.

Introduction of possible purchaser—Revocation of authority—Commission not due.

This was an action by the plaintiffs, a firm of house agents, against Mr. Wilson Barrett, to recover commission for an alleged sale of a house. The defendant had employed the plaintiffs to sell a house for him on commission. After waiting three months without a sale having been actually effected, he put the house up to public auction. Prior to the auction, however, Mr. Simonds had been introduced by the plaintiffs as a

possible purchaser, but he had made various stipulations, and did not complete the purchase. At the auction, Mr. Simonds bought the house for £1,800. The plaintiffs sued for their 2½ per cent. commission. The County Court Judge gave them judgment for £5 only, apparently as a remuneration for their expenses and labour in connection with the matter. Against this decision they appealed.

It was contended for them that the defendant was not entitled to revoke the authority he had given to the plaintiffs, and that a sale having been effected, the commission was due. "*Wilkinson v. Alston*" and "*Ireland v. Livingstone*" were cited.

Mr. Justice Mathew, after hearing counsel on the other side, upheld the decision of the County Court Judge. He had had to say whether the contract with the defendant was that he should pay the commission to the plaintiffs whether the sale took place by public auction or not. If that was intended to be the contract, it should have been made clear. The County Court Judge did not find it to be so. Had it been so, Mr. Barrett would have drifted into a position in which he would be liable to pay two commissions, one to the plaintiffs and one to the auctioneer. The County Court Judge was entitled to hold that this was not intended. He found that the authority to sell had been revoked. He had then to say what the damages were to be. He thought that £5 was enough to pay. The appeal must be dismissed.

Mr. Justice Wills was of the same opinion, and in giving judgment observed that the County Court Judge had held that the case of "*Prickett v. Badger*" applied rather than "*Wilkinson v. Alston*." The defendant had prevented the plaintiffs from carrying out the sale. It might be treated as a revocation of authority, or as a breach of contract. The judgment of the judge involved this view of the facts, that it was doubtful whether but for the auction Simonds would have bought at all. It was urged for the plaintiffs that "*Wilkinson v. Alston*" was against the County Court Judge's decision, but in that case there had been no new intervention, such as a sale by public auction, but the sale was the consequence of the trouble taken by the plaintiffs.

Counsel for the plaintiffs: Mr. Horace Kent; counsel for the defendant: Mr. C. E. Jones.

Bull v. Hebden.

Ile of Wight County Court, November 21, 1889.—Before his Honour Judge Leonard.

Reported *ESTATES GAZETTE*, Vol. xxxiv., p. 446.

Commission on letting a furnished house—Disputed retainer.

The claim here was for 5 per cent. commission, amounting to £10, on the first year's rent of Clarence Tower, Ventnor, which the plaintiff alleged was let on his introduction to a Mrs. Morritt, who had asked him to get a furnished house for her.

Mr. Bull's case was that it was the custom of house agents always to look to the owner of a house for their commission. They never charged the person who wanted a house, but the custom was to have a list of houses on their books, and when a person applied to them they furnished him with the list, and when suited charged the owner of the house. It was the lessor and not the lessee who paid commission.

The facts, according to the plaintiff, were that a Mr. and Mrs. Morritt had applied to him for a house, and as he knew that Clarence Tower was sometimes let, he called there on a Saturday in May. He did not see Mrs. Hebden, but she sent down word that she did not wish to let the house, and he left. On the Monday, however, Miss Hebden called on him, and said her mother had reconsidered the matter and he was to call again. He did so, and had a long interview with Mrs. Hebden, who showed him over the house. While there Mrs. Morritt called, and he was asked to go into another room. After waiting about an hour the servant brought word that Mrs. Hebden would not detain him any longer. The house was let to Mrs. Morritt, but when he asked about making out an inventory, according to the usual custom, he was told that someone else was going to do that. He considered the house was let through his introduction, and, according to usual custom, he claimed commission from the lessor.

Cross-examined: Mrs. Hebden did not ask him to find a tenant. Miss Hebden did not merely call to ask the name of his client. She did not say that her mother did not want to see him. He did not persist and say he would come. He told Mr. Morritt that he had an appointment about Clarence Tower. Mrs. Hebden told him on the Monday that she did not wish to let the house. He really did not know how much the house was let for. He did not ask to see over the house.

Mr. Kitson, house agent of Ventnor and Southsea, was called to prove that it was the usual custom to charge the owner of a house commission for letting it. He had never charged a client who wanted a house. It was a custom throughout the trade to have a list of houses on their books, and if one was let through an introduction to charge the owner commission. He thought Clarence Tower was on nearly everybody's books.

Cross-examined: He had never in his life hear of an instance where the owner declined to pay for letting his house. Mr. Morritt was really his customer, and he had arranged to let him a house. Mr. Morritt had arranged to call and sign the agreement for Avon House, but on the way he met Mr. Bull, who told him of Clarence Tower. Mr. Morritt told witness that Mr. Bull was going to get it for him, and witness replied that he was sorry for that, as he should lose his commission.

In opening the defendant's case, his representative said that Mr. Bull was not Mrs. Hebden's agent, and as a fact Messrs. Pittis and Son were the real persons who let the house. Mr. Bull was told that the house was not to let, but because Miss Hebden called out of curiosity to know who wanted the house, Mr. Bull thought he had an opening to do some business. Mr. Bull was never employed by Mrs. Hebden, and, in fact, was not employed to act in the matter at all.

Mrs. Hebden said Messrs. Pittis and Son were her agents. She told Mr. Bull that she did not wish to let the house, and when Mrs. Morritt called she was annoyed. When a tempting offer was made her through Messrs. Pittis and Son, she accepted it.

Miss Hebden and Mr. Wetherick, a clerk in the employ of Messrs. Pittis, also gave evidence.

In the result, the judge, having taken time to consider the whole facts, found for the defendant.

Mr. Hooper appeared for the plaintiff, and Mr. Estcourt for the defendant.

M'Leod v. Artola Brothers.

Queen's Bench Division, November 25, 1889.—Before Baron Huddleston and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. xxxiv., p. 467.

Alternative claim—Commission or quantum meruit—Special contract.

In this action the plaintiff claimed to be paid by the defendants certain commission in cash and the transfer

to him of certain debentures in the Anglo-Vasco Navarro Railway Company, under an alleged contract with them. In the alternative the plaintiff claimed £5,200 for work and labour done, and for moneys expended at the defendants' request in negotiating a certain loan on their behalf, and on either alternative damages for breach of contract. The defendants alleged that the terms of the contract were that commission was only to be paid if he actually succeeded. The defendants pleaded that the plaintiff had not fulfilled the special terms of the contract, which were that unless he succeeded in obtaining the loan required by the defendants he was not to be paid anything, and could not, therefore, recover damages as claimed upon a *quantum meruit*. Upon these pleas issue was joined.

The plaintiff was a financial agent, and the defendants the contractors for the construction of the Anglo-Vasco Navarro Railway, in Spain. The contract was to procure advances to carry out the work, and was contained in a letter of December 15, 1887. The plaintiff was to endeavour to obtain for the defendants an advance of £120,000, on and upon securing which he was to receive 1 per cent. or £1,200, and £4,000 in debentures of the company. The plaintiff had accordingly put the matter before several financial gentlemen, and had submitted three separate schemes to the defendants for obtaining the required advances. The plaintiff alleged that the defendants had prevented his succeeding in his negotiations, and so earning his commission, by obtaining the money from another source. He stated, in examination-in-chief, that he honestly believed that if the matter had not been taken out of his hands, he would have procured the advance by the means he was pursuing. He deposed to certain interviews at which, he said, the defendants had promised that his agreed position should not be altered in any event; but in cross-examination he admitted that that meant that the original terms of the contract of May 18 should hold good with reference to all three of the schemes he had submitted for the purpose of financing the railway. The defendants called no evidence, and

Mr. Baron Huddleston, in summing up, told the jury that where parties entered into a special contract they were bound by its special terms. He referred the jury to the plaintiff's own letter of December 15, 1887, which, he said contained the terms of the contract.

Those terms were, that if the plaintiff succeeded in obtaining the loan of £120,000 he was to receive 1 per cent. upon that sum and £4,000 debentures in the proposed company; and if he did not succeed he was to get nothing. That was the bargain. The plaintiff had not, in fact, succeeded, and he now sought to recover damages by way of *quantum meruit*, alleging that the defendants had in effect rescinded the original contract. In dealing with the law upon this question, his Lordship referred to "*De Bernardy v. Harding*" and "*Prickett v. Badger*," distinguishing the latter case from the case he was trying by pointing out that in it Mr. Justice Williams, when giving judgment for the plaintiff, had said: "I am anxious it should not be supposed that the Court intends to lay it down as a general rule that, where an agent is employed to sell property, and his authority is revoked before anything has been done under it, he is at liberty to resort to the common courts for his labour in finding a purchaser." The question for them was, therefore, whether in this case the defendants had by the course which they had taken in effect revoked the original contract. If they had not, the parties were still bound by its special terms, and if, on the evidence, they were of opinion that the plaintiff had not succeeded under its terms, their verdict would be for the defendants.

The jury found for the defendants, and judgment was given accordingly.

Counsel for the plaintiffs: Mr. H. F. Dickens;
counsel for the defendant: Mr. L. Glyn.

Martin v. Knight.

Lord Mayor's Court, December 13, 1889.—Before Sir W. T. Charley, Q.C., and a Jury.

Reported *ESTATES GAZETTE*, Vol. xxxiv., p. 525.

Commission on the sale of a public house—Custom of the trade.

This was an action brought by the plaintiffs against Mr. Knight, a public-house valuer and auctioneer, of 69, Finsbury Pavement, to recover £19 3s. 4d., balance of commission due on the sale of a public-house. The defendant paid £13 6s. 8d. into Court.

The plaintiff's case was that he had called upon defendant and introduced to him a Mr. Bishop, who was desirous of disposing of a public-house, situated at

Dalston, called the Wayland Tavern. The price asked was £6,400, "all at," which meant that the fittings and fixtures were to be included in the sale. The defendant's remuneration, if he succeeded in selling the house, was to be £150, of which plaintiff was to have £50—or one-third. A purchaser was found, but when the plaintiff applied to the defendant for his share of the commission, he was offered a cheque for £30, which he refused to accept, pointing out that the defendant had received £135 from the vendor, and £52 10s. from the purchaser—£187 10s. in all—and that he (plaintiff) was entitled to a third of that sum, £62 10s. The plaintiff ultimately accepted the cheque for £30 on account, which left a balance due to him of £32 10s. After deducting the sum paid into Court, the amount in dispute was £19 13s. 4d.

The defence was that only £130 was received by the plaintiff from the vendor, and that the plaintiff was only entitled to a third of this sum, £43 6s. 8d. The allegation that the plaintiff was to receive a third of the money received from both the vendor and the purchaser was denied, and it was alleged that the money received from the purchaser was only by way of a gratuity, and not as commission. An allegation by the plaintiff that it was the custom of the trade for brokers to pay the person introducing the business one-third of the whole profits on the transaction was contradicted.

The jury found for the plaintiff for £6 13s. 4d., in addition to the sum paid into Court.

Counsel for the plaintiff: Mr. Wildey Wright; counsel for the defendant: Mr. Lewis Glyn.

Sadler v. Edwards.

Farnham County Court, December 18, 1889.—Before his Honour Judge Lushington.

Reported ESTATES GAZETTE, Vol. xxxiv., p. 526.

Allowing tenant to take possession—Agent's commission recoverable.

The claim in this case was for £24 12s., £18 15s. being for commission upon £250, the rent of a residence called Waverley Court, Camberley, let by Mr. Sadler on behalf of the defendant, to a gentleman named Monson. The sum of £2 10s. had been paid into Court.

Letters between the parties were read showing that the rental was fixed at £250. It also appeared that

references from influential people were tendered by Mr. Monson and handed to defendant. Four days after the receipt of these by defendant, Mr. Monson arrived at Camberley with his furniture, his house having been burnt, and he (Mr. Monson) took possession, and therefore plaintiff took it that he was accepted as tenant.

In cross-examination the plaintiff stated that he did not know that Mr. Monson had not paid his rent.

His Honour asked if a land agent had anything more to do after a tenant was accepted, and could not agree with the defendant's contention that he only accepted Mr. Monson subject to his references being satisfactory.

Mr. Phillips, land agent, gave evidence of the charges usually made by land agents, and Mr. Sparkes, solicitor, said that Mr. Monson only paid £50 towards the first quarter's rent, and went away before the end of the second.

The defendant's counsel urged that Mr. Monson got possession by a trick, and would not enter into a lease, but his Honour said the gentleman was allowed to take possession, and therefore became a tenant, and gave judgment for the plaintiff for £21 19s., including commission, £16 5s., the sum paid into Court to be deducted.

Mr. Eve appeared for the plaintiff, and Mr. Montefiore (instructed by Messrs. Lee and Pembertons) for the defendant.

Goodeve v. Coxson.

Birmingham County Court, December 18, 1889.—Before his Honour Judge Chalmers.

Reported *ESTATES GAZETTE*, Vol. xxxiv., p. 526.

Rate of Commission.

This action was brought by Mr. F. W. Goodeve, of Cannon Street, Birmingham, auctioneer, to recover £10, commission on the sale of defendant's business.

It appeared that when the defendant instructed Good-eve to sell his business, Goodeve gave him a form to fill up, which stated that the commission was 5 per cent., but that on sums over £100 special terms would be arranged. Nothing was said to the defendant with regard to the amount of commission, and Goodeve advertised the business for sale. He had a great number of applications, and replied to them. The business was eventually purchased by a man named Martin, to whom

the plaintiff had sent particulars. Plaintiff did not see Martin himself, because Martin went direct to the defendant. When the sale had been arranged Coxon called on the plaintiff, and asked him what his commission for selling the business was, and the plaintiff said 5 per cent. on the first £100, and $2\frac{1}{2}$ per cent. on the remainder. The defendant urged that that was too much, but the plaintiff would not take less. Subsequently the defendant tendered him a cheque for £20, stating that Messrs. Hughes and Fleetwood, who also had the matter in hand, and had supplied particulars to Martin at a later date than he, would have been willing to take £20. Plaintiff refused that sum, and in cross-examination stated that the advertising and other out-of-pocket expenses in the case would amount to about £4, and that his profit on the £20 would have been £16 only.

The defendant deposed that when he put the business into Mr. Goodeve's hands the latter undertook to sell it at $2\frac{1}{2}$ per cent. on the first £100, and $1\frac{1}{2}$ per cent. on the balance. The plaintiff was to value the business for that sum. When Martin bought the business they valued it between themselves, and as Mr. Goodeve's services were not required the defendant went to him and told him that some allowance ought to be made on the commission in respect of valuation; and it was arranged between them that Mr. Goodeve should take £20 for his services. The defendant was surprised to find, when the cheque for £20 came to hand, that the plaintiff had changed his mind.

The learned Judge said he could not believe that a respectable auctioneer would agree to take £20, and then go back from his word and bring the matter before that Court in the way the plaintiff was alleged to have done, and he gave judgment for the amount claimed.

Counsel for the plaintiff: Mr. Stubbins; counsel for the defendant: Mr. A. Young.

Woods v. Burchett.

Southwark County Court, January 23, 1890.—Before his Honour Judge Holroyd.

Reported ESTATES GAZETTE, Vol. xxxv., p. 67.

Introduction—Property brought to purchaser's notice by poster

The action was brought by Mr. Thomas Woods, auctioneer, Hounslow, to recover commission on the sale

of the houses known as Nos. 1 and 2, Myrtle Villas, 1 and 2, Lansdowne Villas, 1 and 2, Cambridge Villas, 1 and 2, Claude Villas, 1, 2, 3 and 4, Lansdowne Terrace, Zoar Cottage, Zoar Chapel, and two leasehold ground rents situate at Hounslow.

It appeared that in May of 1889 the defendant applied to the plaintiff for his terms, and thereupon the plaintiff alleged it was agreed that if the property was sold he was to have $2\frac{1}{2}$ per cent. as commission on the result of the sale, and ten guineas for out-of-pocket expenses; afterwards reduced to seven guineas by arrangement. On the other hand the defendant contended that if the property was sold through the plaintiff, the agreed terms were $2\frac{1}{2}$ per cent. commission only. The facts of the case as stated by the plaintiff's counsel in opening were to the effect that the plaintiff had posters announcing the sale printed, one of which was hung up in the bar of the Railway Inn, at Hounslow; and that the plaintiff at that place saw a Mr. Pemberton, and drew that gentleman's attention to the announcement. Subsequently Mr. Pemberton went to Messrs. Saxton and Morgan, the solicitors for the vendor, for further information. A Mr. Fisk, who was chief clerk to that firm, had several interviews with Mr. Pemberton about the matter. Shortly afterwards the property was sold privately to Mr. Pemberton, and the plaintiff claimed his commission and out-of-pocket expenses. It was contended by the defendant that Mr. Fisk had first drawn the purchaser's attention to the property, and as he refused to pay the commission Mr. Woods brought the present action. The defendant paid seven guineas into Court to cover all out-of-pocket expenses to which the plaintiff had been put and denied further liability.

Several witnesses were called in support of the plaintiff's case, including Mr. Woods, the plaintiff; Mr. Arthur Woods, his son; Mrs. Woods, his wife; Miss Annie Bulley, the manageress of the Railway Inn; Mr. R. Pemberton, the purchaser; and Mr. Sudlow Herrick, auctioneer, of Kingston-on-Thames. For the defence, Mr. William Burchett, the defendant, and Mr. Fisk gave evidence.

His Honour, in giving judgment, said that with regard to the defendant's contention that if the property was sold the plaintiff was to receive $2\frac{1}{2}$ per cent. commission only, he was clearly of opinion that that contention was right, and therefore found for the defendant

108 COMPENDIUM OF COMMISSION CASES.

on that part of the case. In his opinion, the sale was clearly brought about by the plaintiff's agency. A poster was put up at a hotel at Hounslow stating that a sale of certain property was going to take place. The poster was undoubtedly seen by the purchaser, who, naturally, went to the solicitors whose names were at the foot of the bill for further information. Mr. Fisk might have influenced the purchaser, but Mr. Pemberton's attention was first drawn to the property through the poster at the inn.

Judgment was therefore given for the plaintiff for £35 5s. 6d. (exclusive of the £7 7s. paid into Court) with costs.

Counsel for the plaintiff: Mr. Morton W. Smith;
counsel for the defendant: Mr. C. J. Peile.

Webster v. Wright.

Scarborough County Court, January 21, 1890.—Before his Honour Judge Bedwell.

Reported ESTATES GAZETTE, Vol. xxxv., p. 88.

Commission for finding a tenant and on valuation—Customary charges.

The plaintiff was the tenant of Crossley's Hotel, Scarborough, and had instructed the defendant to advertise and find a tenant for the hotel, which he succeeded in doing. He took a deposit of £30 from the new tenant, and acted for the plaintiff in the valuation, which amounted to £411. When asked for his account he made a claim of £31 6s. 6d., being 5 per cent. on the amount of the valuation, 2½ per cent. for finding a tenant, and the remainder for costs of advertising. The plaintiff, who was now suing for money had and received on her account, admitted she was liable for £13 14s.

The defendant said he had been an auctioneer and valuer for 30 years, the last six having been passed in Scarborough; that these were his usual charges, and he had frequently made similar charges; and that during the six years he had been in Scarborough he had never completed a valuation nor sent in a valuation bill.

The principal local auctioneers were called for the plaintiff, and stated that the customary charge for such business was 2½ per cent. on the amount of the valuation,

5 per cent. on the first year's rent of the premises, and the cost of advertising.

Judgment for the plaintiff, with costs.

Richards v. Branscome.

Westminster County Court, January 29, 1890.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxv., p. 87.

Rate of commission—Right of agent to employ solicitor.

Mr. James Barrow, carrying on business as Richards and Co., auctioneers and estate agents, of Victoria Buildings, Victoria Station, here sought to recover £14 12s. 6d., being commission at the rate of 7½ per cent. for letting furnished apartments at 2, Princes Mansions.

The plaintiff was called and said that he had received instructions for the letting from the defendant, who had a lease of the premises for seven years, which was determinable at three or five years. There was an unexpired term of about 20 months. He accordingly found a tenant. The usual house agent's commission in such cases was 5 per cent. on the first year's rental, and 2½ on the second, but in the present case the rental was an increasing one, and to save complications a one year's commission of 7½ per cent. was charged. Seven and a half per cent. was the universal commission charged by respectable house agents. A draft assignment of lease was drawn up at the defendant's request, and for that a charge of a guinea had been made.

In cross-examination, the plaintiff said he was not instructed by the defendant personally to employ a solicitor to prepare a transfer of lease, but it was thought advisable to have it properly done. When the transfer was completed it was engrossed on the original lease, in the presence of all parties. The defendant told him to do all that was necessary, and he used his discretion accordingly.

Mr. T. W. Walford was called and said he had been for many years in the business. The transfer in question was carried out under his supervision, and it was done quite in accordance with the usual customs of the trade. Before the draft assignment was endorsed, he read it over in the presence of both the parties.

For the defence, Mrs. Clara Branscome said she signed the draft agreement, but at the time she did

not know what liability she was incurring. The plaintiff's clerk distinctly told her that the charges would be £9, which would be at the rate of 5 per cent. commission, which sum she had paid into Court, together with other incidental expenses.

In giving judgment, his Honour said he was of opinion that the plaintiff was only entitled to 5 per cent. commission. It was his place to have advised the defendant, and not to have employed a solicitor to prepare a draft assignment, as by so doing he placed the defendant very much at the mercy of the parties who took the premises. It was a very dangerous practice for house agents to employ solicitors without the consent of their clients, and therefore he should disallow that portion of the claim. He should allow the plaintiff £9 as commission, and £1 2s. which had been expended on advertising, and as this amount was amply covered by the sum the defendant had paid into Court, judgment must be for the defendant, with costs.

Collins v. Hagge.

Westminster County Court, February 11, 1890.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxv., p. 133.

Obtaining a tenant—Both principal and agents answering advertisement.

The plaintiffs in this case were a firm of house agents and auctioneers, carrying on business in Oxford Street and South Audley Street, and their case was that they had received instructions from the defendant to find a tenant for some furnished rooms belonging to her, at 27, North Audley Street. Acting upon these instructions, they adopted the usual methods, one of which was to answer advertisements. Seeing an advertisement in a daily paper which they thought likely, they answered it, and the result was that a Mrs. Lyons called at their office, and produced their letter, whereupon they gave her a card to view the rooms. It appeared that the defendant herself had answered the same advertisement, but the plaintiffs contended that inasmuch as Mrs. Lyons went to them first, and obtained the order to view, it was they who were actually the introducers of the tenant. The result of the interview was that Mrs. Lyons took the rooms for nine months, and

the plaintiffs claimed their commission of 5 per cent. on £50 a year.

Mrs. Hagge, the defendant, was called, and said she answered an advertisement, and as a result Mrs. Lyons called upon her, and ultimately agreed to take the rooms for nine months, at a rental of £60 a year. When Mrs. Lyons first called on her she told her that she had also called on the plaintiffs, but she (defendant) did not know they had written to her. But even had they not done so, she would have obtained a tenant just the same.

Mrs. Lyons was called, and said she had a number of letters in reply to her advertisement. She called on the plaintiffs before she got to Mrs. Hagge, but that was quite accidental.

His Honour said he did not think the plaintiffs were entitled to their commission, as it was obvious that the defendant would have let her rooms without them. He, however, would give the plaintiffs judgment for one guinea, in consideration of what they had done.

Homer v. Rugg.

Lord Mayor's Court, February 20, 1830.—Before Sir Thomas Chambers and a Common Jury.

Reported ESTATES GAZETTE, Vol. xxxv., p. 190.

Person bidding at auction ultimately purchasing.

This was an action brought by Mr. Homer, an architect and surveyor, of 99, Gresham Street, against Mr. Daniel Rugg, an auctioneer, to recover £23 4s., balance of £35 received by the defendant, for the use of the plaintiff by way of deposit on the sale of certain plots of land. The defendant paid £10 1s. into Court.

The plaintiff was the owner of some land at Frinton, and instructed the defendant to sell it at a public sale which he was about to hold. The defendant's remuneration was to be 2½ per cent. on the amount realised, and he was also to receive his out-of-pocket expenses. The defendant had about £800 worth of property to sell altogether, and the expenses attending the sale amounted, he stated, to £53. The plaintiff's land was not sold at the sale, but it was subsequently sold by private contract for £350, and a deposit on that amount was paid to the defendant of £35. The plaintiff's case was that inasmuch as the land was not sold

112 COMPENDIUM OF COMMISSION CASES.

at the sale, and eventually sold for a smaller sum than that stipulated, the defendant was not entitled to the portion of the expenses of the sale which he claimed. The only sums, he contended, he was entitled to were £8 15s. commission and £3 1s. for advertising, which, when deducted from the £35 deposit, left a balance in the hands of the defendant of the sum claimed.

The defendant's case was that the person who ultimately purchased the land made a bid of £350 for it at the sale, and that it was agreed between himself and the plaintiff a day after the sale that if this gentleman bought the land for £350 by private contract, he (defendant) should be paid his expenses and commission. When these sums were deducted from the £35 it left a balance of £10 1s., which had been paid into Court.

The jury found for the plaintiff for £18 4s., including the sum paid into Court.

Counsel for the plaintiff: Mr. G. White; counsel for the defendant: Mr. Rockingham Gill.

Southey v. Holloway.

Lord Mayor's Court, February 26, 1890.—Before Mr. Hopwood, Q.C., Deputy Judge, and a Jury.

Reported ESTATES GAZETTE, Vol. xxxv., p. 190.

Commission on loan—Conditions of advertisement.

The plaintiff was suing to recover £50, being 2½ per cent. commission on a sum of £2,000, which the plaintiff had agreed to procure as a loan on certain leasehold premises.

It appeared that the defendant was the owner of certain leasehold premises in the neighbourhood of Gray's Inn, and he advertised for a loan of £2,000 on the property. The plaintiff answered the advertisement, and the defendant in a letter of October 11, 1889, agreed to pay a commission of 2½ per cent. on the amount advanced if the plaintiff was successful in procuring the loan, but declined to pay any preliminary expenses. The plaintiff's case was that he succeeded in finding a Mr. Chapman, who was ready and willing to advance the £2,000, but when the defendant was informed of this fact, he declined to accept the loan. The plaintiff contended that, under the circumstances, he had done everything to entitle him to the agreed commission of £50.

Mr. Charman, in his evidence, said that if he had advanced the money he should have required the usual procuration fee, and at the close of the plaintiff's case it was submitted for the defendant that there was no case to go to the jury, inasmuch as the plaintiff had failed to prove that he could have performed all the conditions of the advertisement.

The learned Deputy Judge non-suited the plaintiff.

Counsel for the plaintiff: Mr. Harpur; counsel for the defendant: Mr. Lewis Glyn.

Haltridge v. The Tunbridge Wells Benefit Building Society.

Brentwood County Court, March 7, 1890.—Before his Honour Judge Abdy.

Reported *ESTATES GAZETTE*, Vol. xxxv., p. 215.

Negotiations broken off—New transaction.

The plaintiff, an auctioneer, was suing for £25, commission on the sale of eleven cottages at Brentwood, which the plaintiff alleged were sold to the purchaser introduced by him. He also claimed interest on the £25.

The case rested largely upon the correspondence, of which one letter referred to some other houses, as to which the plaintiff had offered to act as agent. Mr. Catchpole (the secretary of the defendant company) wrote to the effect that the directors had already an agent in Brentwood; but if plaintiff "could introduce a tenant or purchaser he had every reason to believe his directors would pay the usual commission." Commission to the extent of £20 was subsequently paid to Mr. Haltridge in respect of that property. In reference to the particular cottages in dispute Mr. Haltridge had a sale of property, and one of the purchasers was Mr. Parker, who liked the houses he bought so well that he wanted to buy some more. Mr. Haltridge, in reply to his inquiry, mentioned the houses belonging to the defendant company on the opposite side of the road. Plaintiff then wrote to the company, and said he thought he could find a purchaser for the houses in Sussex Road; and asked 2½ per cent. commission and 1 per cent. for expenses, if the purchases were completed. Mr. Catchpole answered that letter, leaving the matter still undecided; and eventually he wrote again stating that if

Mr. Haltridge's client would give £1,200 for the property, and pay the agent's commission, he believed the directors would close with him at once. Mr. Haltridge managed ultimately to get Mr. Parker to offer £1,200, but he wanted a free conveyance and would pay no commission. Mr. Haltridge therefore asked the company for a commission of £25, and hoped the matter would be put through. The directors did not state that they would agree to that; and, after some further correspondence, the plaintiff said he "supposed the matter must fall through." A month latter Mr. Parker bought from the company direct the property in question for £1,200—the precise figure which Mr. Haltridge had got him to offer.

His Honour having expressed the opinion that the correspondence clearly showed that Mr. Haltridge had withdrawn from the transaction, it was submitted by the plaintiff's counsel that if an agent brought a purchaser to a vendor, and the vendor, with a view to upsetting the agent's commission, withdrew when they had almost come to terms; and then they came together afterwards independently, or were introduced by another party, they were bound, and that that was practically the condition of things here.

His Honour, in giving judgment, said he had two points to decide. First, was the plaintiff instructed by the defendant company to do work for them in the matter of selling this property? and, secondly, if he was so instructed, was this sale carried out in connection with that agreement? As to the first question, it was abundantly clear to him that there was no positive agreement, or anything like it, for the plaintiff to find a purchaser for the defendant company. As to the second question, he held that the purchase was not brought about by the plaintiff. There would, therefore, be judgment for the defendant company, with costs.

Mr. T. E. Scrutton appeared for the plaintiff; and Mr. W. C. Cripps for the defendants.

Richards v. Game.

Westminster County Court, March 17, 1890.—Before his Honour Judge Bayley.

Reported *ESTATES GAZETTE*, Vol. *xxiv.*, p. 236.

Costs of preparing agreements of tenancy included in commission.

This action was brought by Messrs. Richards and Co., of Victoria Buildings, to recover amongst other

things the cost of preparing two agreements of tenancy in respect of Nos. 1 and 2, Oxford Villas, Hammer-smith.

The plaintiffs stated that defendant had paid them £4 5s., being the commission due for procuring tenants, but that she declined to pay the other charges on the ground that they ought to have been included in the charge for commission. There was no custom in the trade to prepare documents of that kind, and then include the cost in the commission. They were always charged a guinea each extra by all house agents.

His Honour said the agent was not entitled to his commission until he had made some binding agreement between the parties. It was the duty of the agent not only to prepare agreements, but, having prepared them, to get them stamped.

For the defence, evidence was given by a builder to the effect that he had employed any number of house agents to procure tenants for his houses, and had never been asked by them for payment for preparing an agreement of tenancy. It was always included in the 5 per cent. commission. The defendant, moreover, deposed that before anything was done she distinctly told the plaintiffs that she would not pay anything beyond the 5 per cent. commission, and that if the tenants wanted agreements they must pay for them.

In giving judgment his Honour said he did not think the defendant was liable to pay for the agreements, and his judgment must therefore be for the defendant.

Andrade v. Toleman.

Lord Mayor's Court, March 21, 1890.—Before Sir Thomas Chambers.

Reported *ESTATES GAZETTE*, Vol. xxxv., p. 262.

Commission recoverable though rent not paid.

This was an action brought by Mr. Alexander Andrade, estate agent, against Mr. James Toleman, to recover £5 10s commission on letting offices on the second and third floors of premises at Walbrook.

The defendant, in a letter to the plaintiff, had said, "If you introduce a tenant I will pay you the usual commission of 5 per cent. on the first year's rental," and he enclosed particulars of the premises to be let.

116 COMPENDIUM OF COMMISSION CASES.

The plaintiff introduced a tenant, who, however, failed to pay any rent, and a distraint resulted in a sum of £11 11s. 9d. only being recovered of the £27 10s., the amount due for the first quarter's rent.

The defendant's case was that the plaintiff was only entitled to commission on the amount received, but the jury found a verdict for the full amount claimed.

Counsel for the plaintiff: Mr. Lewis Glyn; counsel for the defendant: Mr. Hume Williams.

Baker v. Taylor.

Woolwich County Court, April 3, 1890.—Before his Honour Judge Powell.

Reported *ESTATES GAZETTE*, Vol. xxxv., p. 318.

An agent must not make a profit out of his principal.

The claim here was for £80, money received by the defendant for the plaintiffs' use, and the action was brought jointly by Mr. Baker and his wife. The latter was the owner of some property at Paddington, of which the defendant collected the rents. She sold her Paddington property and bought some houses at Westcombe Park. The purchase was effected through the defendant, who, on being asked the lowest price of the houses, stated that the amount was £1,000. That sum was paid, and the plaintiff gave Taylor £10 for his trouble. It subsequently came to the plaintiffs' knowledge that the price asked by the owner of the Westcombe Park property was only £920, and that the defendant had pocketed the remaining £80. The owner stated that he told Taylor that he could have all he obtained over £920 as his commission. This arrangement was made, according to the defendant, before he did any business for the Bakers, and was not specially with regard to them. The £10 was in respect of a mortgage on the Paddington property.

The jury gave a verdict for the plaintiff for the £80 claimed.

Esam v. Carter.

Hastings County Court, April 14, 1890.—Before his Honour Judge Martineau.

Reported *ESTATES GAZETTE*, Vol. xxxv., p. 353.

Introduction as tenant or as purchaser?

This was a claim for £19 as commission for house letting, the plaintiffs' case being that he first intro-

duced the tenant to the house as a purchaser, but in order that she should be able to see whether the house was in good order she first rented it for one year. He had lost some papers in 1886, and amongst them a communication from Mr. Carter, saying that he was to sell the property at £300 or £850, or let it. He let it to a Mrs. Clift for a year with the option of purchase, and that lady subsequently negotiated through him for the purchase of the house and land at £850.

The defendant said that Mr. Esam introduced Mrs. Clift as a tenant merely. He (defendant) had not endeavoured to sell before Mrs. Clift took the house as a tenant, and he did not recollect having any conversation with Mr. Esam as to the sale of the house.

His Honour eventually gave judgment for the defendant with costs.

Mr. E. A. Knight appeared for the plaintiff; and Mr. F. G. Langham for the defendant.

Trollope and Sons v. Hamilton and others.

Queen's Bench Division, May 22, 1890.—Before Mr. Justice Day and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. xxxv., p. 458.

First introduction—Commission payable to two firms.

The plaintiffs in this case were Messrs. George Trollope and Sons, the well-known land and estate agents, and the defendants were Mrs. Charlotte Maria Hamilton, Cadogan Square; Mr. Alexander Charles Hamilton, 41, Lennox Gardens; and Mr. Ralph Charlton Palmer, 9, Little Stanhope Street, Mayfair.

The plaintiffs' claim was £307 10s., being commission on the sum of £17,000 at the following rate—namely, 5 per cent. on the first £100, 2½ per cent. on £4,900, and 1½ per cent. on £12,000, which rate of commission the defendants agreed in September, 1884, to pay to the plaintiffs on the purchase money of the defendant's house, No. 1, Cadogan Square, in the event of the plaintiffs finding for the defendants a purchaser. The commission became due in May, 1889, when the plaintiffs found a purchaser at the sum named. The defendants were sued as trustees under the will, dated February 18, 1885, of Robert William Hamilton, deceased. The defendants admitted their liability to pay commission;

118 COMPENDIUM OF COMMISSION CASES.

but the question was as to whether they ought to pay it to the plaintiffs, or to Messrs. Godwin, Basley and Co., another firm of land and estate agents.

Evidence was first given by a clerk in the employ of the plaintiffs, and engaged in the auction and estate agency department, who deposed that he first saw Mr. Kenyon Stow about March or April, 1887. He called then at the offices of the plaintiffs more particularly as to taking a furnished house for the season. In the course of interviews with Mrs. Kenyon Stow, mention was first made of No. 1, Cadogan Square. At another interview with Mr. Kenyon Stow, witness again mentioned the fact that the house in question was for sale or to be let. He stated that the price was £18,000, at £30 a year ground rent, or £15,000, at £155 a year ground rent. There were other interviews, and Mrs. Kenyon Stow had a card to view the house. In 1888 he saw Mrs. Hamilton at the house in question. She observed that she would want to take a similar house. The witness asked who was taking the house for the season, and was told that it was a Mr. Stow, whereupon the witness remarked that he had introduced the house to that gentleman with a view to a sale. He did not remember that Mrs. Hamilton made any reply to that.

In cross-examination the witness stated that Mr. Stow, the purchaser, had not paid any commission. There was no arrangement that he was to pay so far as he knew. The house was let to him in 1888 for the season. The letting did not take place through them. He understood the house was let through Messrs. Godwin, Basley and Co. The plaintiffs did not claim any commission for the letting. Witness had since learned that the house was let to Mr. Stow in 1888 with an option to purchase for £17,000.

Another witness in the employ of the plaintiffs stated that in 1889 Mr. McNeill, the agent acting for Mr. Stow, made an offer to him for the house which was refused. Ultimately the offer was increased to £17,000 and accepted. He did not know that anyone else was acting as agent for the defendants.

For the defence it was pointed out that Mrs. Hamilton had put the house into the hands of various agents, including Messrs. Trollope and Sons and Messrs. Godwin, Basley and Co.

Mr. Frederick Hadley, one of the managers of the

business carried on by Messrs. Godwin, Basley and Co., said he remembered No. 1, Cadogan Square, being put upon their books for purposes of sale or letting. They received renewed instructions on several dates. They gave many cards to view previous to 1888. In April, 1888, witness saw Mr. Stow. That gentleman went to the office in the afternoon, and asked for particulars of houses, and the witness gave information with respect to various properties, including the one in question. He took an order, and went and saw the house at once. On his return he stated that the house suited him exactly. The witness thereupon showed him the different prices in the book, the lowest of which was £17,000, according to the last instructions. Mr. Stow then offered 14,000 guineas, and witness saw Mrs. Hamilton in the evening, and submitted the offer, which that lady refused to accept. Mr. Stow then inquired if he could take the house furnished. The witness accordingly saw Mrs. Hamilton again, and she, being of opinion that Mr. Stow was a likely purchaser, expressed her willingness to go out of her way. Mr. Stow then offered 600 guineas for the season, with the option of purchase for £17,000, which was ultimately accepted by Mrs. Hamilton. Mr. Stow signed the agreement, and paid half of the 600 guineas.

Mr. Herbert Eldridge, a member of the firm of Messrs. Godwin, Basley and Co., deposed that the last witness conducted the preliminary negotiations, and that his firm received the commission for the letting. He did not know anything of Messrs. Trollope and Sons being engaged in the matter till April 12, 1889.

Mr. Kenyon Stow stated that he believed he went to the office of Messrs. Godwin, Basley and Co. in April, 1888. He thought he had an order from them to view the house in question. He certainly viewed it, and probably returned to the office on the same day. He did not know whether he had previously seen the house. He had no definite recollection that he had seen it except on that occasion. He afterwards took the house and occupied it.

The learned judge having summed up the evidence, a verdict for the plaintiffs for the full amount claimed was returned.

Counsel for the plaintiffs: Mr. Crump, Q.C., and Mr. Ram; counsel for the defendants: Mr. Gully, Q.C., and Mr. Walker.

Eiloart and Temple v. Kingston.

Folkestone County Court, May 13, 1890.—Before his Honour Judge Selge.

Reported ESTATES GAZETTE, Vol. xxxv., p. 459.

Denial of retainer.

This was a claim for commission for letting apartments at 9, The Lees, Folkestone, and also for letting a furnished house at 64, Coolinge Road.

Mr. Temple said he was one of the plaintiffs. He remembered the defendant calling at his office to let, furnished, 64, Coolinge Road. He made an entry of it in the call book on September 16, 1889. A few days after that he had inquiries for furnished apartments by a Mr. Lawson. On October 3 he called at the defendant's house, at No. 9, The Lees, and on the same day he wrote to Mr. Lawson, enclosing particulars of some apartments. Mr. Lawson called on him, and he took him to the defendant's house, and he took the apartments. Subsequently he called upon Mr. Kingston and asked for his commission. He (defendant) said they had shown Mr. Lawson other houses, and therefore could not claim commission.

Mr. Bernard Eiloart, senior partner of the firm, said he wrote a letter to the defendant on October 10 asking for payment of commission. In the following January he called upon Miss Bruce, who lived at 62, Coolinge Road, as she wanted a house between 80 and 100 guineas for the year, and he advised her to move to No. 64. On February 12 Miss Bruce called at his office and dictated an offer for the house. He wrote to defendant submitting the offer. It was the usual practice to charge 5 per cent. commission on the total of the rent. He had had considerable London experience in these matters. In London they charged 5 per cent. commission.

Miss Bruce gave confirmatory evidence. She had told defendant that Mr. Eiloart had mentioned the house to her. She could not remember what he replied, but he did say he generally did business with Mr. Sherwood. Had it not been for Mr. Eiloart she certainly should not have taken the house. Mr. Sherwood made the agreement and she signed it.

Mr. Harry Howell Barton, an auctioneer and house agent, carrying on business in Folkestone, said the com-

mmission on letting houses was 5 per cent. The commission for letting apartments was the same.

The defendant's case was a direct denial of that put forward by the plaintiffs. He alleged that the plaintiffs were strangers to him. He had never commissioned them to let either his house or apartments.

His Honour, in summing up, said that the defendant's case was a very remarkable one. There could be no doubt that the apartments were let through Messrs. Eiloart and Temple, and also the house in Coolinge Road. It appeared to him that the plaintiffs were instructed by the defendant, and he should give judgment for the plaintiffs for the amount claimed, with costs.

Mr. F. Hall appeared for the plaintiffs.

Parr v. Headdey.

Queen's Bench Division, May 22, 1890.—Before Mr. Justice Grantham and a Common Jury.

Reported *ESTATES GAZETTE*, Vol. xxxv., p. 482.

Disputed rate of commission—Scale of the London Institute of Estate and House Agents.

The plaintiff in this action was a member of the firm of Messrs. Parr Brothers, carrying on business at Peterborough as auctioneers and estate agents, and he sued the defendant for commission on the sale of 16½ acres of building land in the neighbourhood.

The defendant's solicitors requested the plaintiff to find a purchaser, and promised a very good commission in the event of a sale being effected. The plaintiff, in consequence, brought the matter to the notice of the Rock Building Society, who ultimately bought the land for £3,300, which was alleged to have been its outside value. On this sum the plaintiff accordingly charged a commission of 2½ per cent., but the defendant considered that 1 per cent. was the proper scale of remuneration, and paid £35 into court as sufficient to satisfy the plaintiff's claim.

Evidence was given that the scale of the London Institute of Estate and House Agents with respect to sales of freehold and copyhold estates and houses by private contract was £5 per cent. on the first £100, and after that £2 10s. per cent. up to £1,000.

The learned judge having summed up, the jury returned a verdict for the plaintiff for the 2½ per cent. commission, that is £47 10s. beyond the amount paid into court, and judgment was given accordingly.

122 COMPENDIUM OF COMMISSION CASES.

Counsel for the plaintiff: Mr. Dickens, Q.C. ; counsel for the defendant: Mr. Crump, Q.C., and Mr. Graham.

Hope v. Nelson.

Wigton County Court, May 21, 1890.—Before Vincent Thompson, Esq., Deputy Judge.

Reported ESTATES GAZETTE, Vol. xxxv., p. 482.

Conditions of sale—Commission payable when horse not sold.

This claim was brought by an auctioneer in respect of commission on a horse which was entered for sale by the defendant at the plaintiff's mart, but not brought forward.

The sale was held under special conditions ; and one of them was as follows :—" Any horse or horses entered in the catalogue and sold privately, either at home or on the road to the mart, or not brought to the mart for sale, will be charged 5 per cent. commission on the reserve price or estimated value." The defendant did not bring his horse to the mart, and the plaintiff now claimed the commission upon the reserve price to which he was entitled under the above rule, of which the object was to prevent persons who entered horses for sale, and thus had them advertised, escaping from paying commission.

The defendant now said that the horse had pulled a shoe off and became lame, and was not fit to be sent to the mart. For the plaintiff, however, it was stated that the only explanation which the defendant had previously given was contained in a letter which he wrote, and in which he stated that on the morning of the sale he was ill.

His Honour said that the defendant had given two different reasons for not sending the horse to the mart, and with the rule staring him in the face, he was bound to give a verdict for the plaintiff for the amount claimed, with costs.

Mr. Rigg appeared for the plaintiff.

Isaac v. Fraser.

Queen's Bench Division, June 5, 1890.—Before Mr. Justice Hawkins and a Special Jury.

Reported ESTATES GAZETTE, Vol. xxxv., p. 507.

Denial of retainer or of promise to pay commission.

This was an action to recover commission upon the

sale of an estate, and the plaintiff's case was that he first met the defendant, General Fraser, at Christie's Rooms, and in the course of conversation alluded to the estate in question. At first he did not mention its name, but said, "If you do buy it, will you give me my commission for telling you about it?" The defendant replied, "Certainly, certainly," and the plaintiff then told him that the estate was at West-end-iane, West Hampstead, and subsequently obtained for him further particulars. When the estate was put up to auction by Messrs. Baker and Sons, of Queen Victoria Street, the General attended and purchased it for £32,000. Subsequently the plaintiff asked for commission upon the transaction, but was told that he was not entitled to anything. The plaintiff now asked for 1 per cent. upon the purchase-money, or such other amount as the jury should think fair.

The plaintiff gave evidence in support of his case.

Mr. Leopold Farmer, estate agent, deposed that on June 18, 1889, with and at the request of Mr. Isaac, he called upon General Fraser at his residence in Sloane Street. Major Taylor was present at the interview. The witness was introduced to the defendant by Mr. Isaac. He (the witness) advised the defendant as to the value of the property, and gave his opinion concerning the neighbourhood, and suggested that he should purchase the property for him. The defendant made an appointment to be at the witness's office on the 21st, which was the day of the sale. General Fraser and Major Taylor called upon him on the day named. During the interview the Major said to the General, "Mr. Farmer intends to charge you 1 per cent. for purchasing," the reply being, "I am not going to pay any commission at all." After further conversation, the defendant said to witness, "I am not going to pay any two commissions. My solicitor tells me I must only pay you for the trouble you have had in coming down to me." The General and Major then left. The defendant had not paid him anything.

Mr. Henry Clement Wood, auctioneer, surveyor and estate agent, of Great James Street, Bedford Row, and surveyor for the parish of Tooting, stated that he had been in business for about twelve years. He had heard the evidence given in this case. The usual commission was 1 per cent. That was the scale laid down by the Surveyors' Institution.

By his Lordship: If one private gentleman apprised another private gentleman of the fact that a certain estate was for sale, and the information given led the latter to purchase the property, he should think it an unreasonable thing if any commission were claimed.

General Fraser stated that on the occasion of the meeting at Christie's rooms not one word was said about commission, and he did not make any appointment to meet the plaintiff again. The first time he saw West End House he found the walls and trees in front of it were placarded. On that occasion he saw the plaintiff. After preliminary conversation, the plaintiff said, "If you buy this place, I hope you will give me something." Witness laughed at the idea of buying the property, and said, "I think I should do something for you or give you something." He never heard the word "commission" mentioned by the plaintiff till after the purchase was concluded. At the interview, the plaintiff further said, "If you do think of purchasing the place, I wish you would employ my brother-in-law, Mr. Farmer." Wishing to do the plaintiff a good turn, witness replied, "I will see about that." The plaintiff inquired if he might bring him round to witness's house, and he replied in the affirmative. Plaintiff and Mr. Farmer called upon him in due course, and wishing to do the plaintiff a good turn, he promised to employ Mr. Farmer if he thought of purchasing. The witness called upon Mr. Farmer on the day of the sale, and the first thing that gentleman said was, "What commission are you going to give me?" In answer, the General said, "Whatever my solicitor says is handsome—no more and no less." Mr. Farmer intimated that his charge would be 1 per cent., and the witness declined to engage him on those conditions. The witness attended the sale, bid himself for the property, and bought it. It was distinctly untrue that he said he would not pay "two commissions."

Major Taylor gave corroborative evidence.

The jury returned a verdict for the defendant.

Counsel for the plaintiff: Mr. Kemp, Q.C., and Mr. Fillan; counsel for the defendant: Mr. Henn Collins, Q.C., Mr. Montague Lush and Mr. M'Neil.

Kay v. Allen and Mannooch.

Westminster County Court, June 25, 1890.—Before his Honour
Judge Bayley and a Jury.

Reported ESTATES GAZETTE, Vol. xxxv., p. 600.

Agreed commission—Payment of lump sum.

This action was brought against Messrs. Allen and Mannooch, house and estate agents, to recover £27 15s., alleged to have been improperly deducted in connection with the sale of a house in Grosvenor Street. The dispute arose in the following manner:—Mr. Lister Kay was the owner of the house, and being desirous of finding a purchaser, he communicated with Messrs. Allen and Mannooch, and instructed them to do their best to find a purchaser. Negotiations were at once set on foot, and shortly afterwards a Mr. Johnson, who was also a house agent, called on them, and expressed a desire to purchase the premises on behalf of a Mrs. Forrester. He was given an order to view, and did so, in company with Mr. Cobb, Messrs. Allen and Co.'s manager. The following day Mr. Johnson called again and presented a written offer to purchase for £8,150. Mr. Kay was present, and agreed to accept that sum, at the same time mentioning the fact that he had agreed to pay the agents the sum of £200. When the matter was fully completed, Messrs. Allen and Co. applied for their agreed commission of £200. In reply to their application a sum of £172 5s. was forwarded to them by the trustees, together with an intimation that they were only instructed to pay the ordinary sum due as commission. The agents had then in hand a sum of £80 which had been handed to them in payment of some fixtures, and, feeling that they were entitled to the balance of the £200, they deducted the amount due to them from the £80, and the balance of £27 15s. was the subject of the present action.

Mr. Cobb gave evidence, and Mr. H. W. Johnson was also called. He said it was he who introduced Mrs. Forrester to the premises. His firm would be entitled to a third of the commission. He heard Mr. Kay on several occasions say that he was going to pay the agents £200.

Mr. Drummond Lister Kay was called on the other side and totally denied that he ever promised to pay the defendant £200. They asked him if he would, but he distinctly refused to do so. When he on a former

occasion put the matter in the hands of Mr. Copping he did undertake to pay him £200, but he never extended that offer to Messrs. Allen and Mannooch. He told Cobb that he should not pay £200, but that when the matter was concluded he would pay the usual commission.

The jury having come to the conclusion that the defendants were promised £200, and were justified in deducting the £27 15s., judgment was entered in their favour, with costs.

Mr. T. Forbes appeared for the plaintiff, and Mr. Lynden Bell was counsel for the defendants.

Grogan and Co. v. Smith.

Queen's Bench Division, July 9, 1890.—Before Mr. Justice Grantham.

Reported *ESTATES GAZETTE*, Vol. xxxvi., pp. 34 and 573.

Commission as a rule recoverable when agent has found party ready and willing to purchase, but regard must be had to the facts.

This was an action brought to recover commission earned by the plaintiff as house agent in reference to the sale of a house in Park Street.

The plaintiff, whose business was carried on under the style of Henry Grogan and Co., was introduced to the defendant, who was then building certain houses in Park Street, and the defendant authorised him to find purchasers for the leases, the terms of commission being 5 per cent. on the first £100, and 2½ per cent. after that up to £5,000. The plaintiff gave an order to view No. 106 to a Mr. Watson, and received a letter from the architect and surveyor, instructed by Mr. Watson, offering to give the sum of £5,000 for a 90 years' lease of No. 106. On that plaintiff wrote to the intended purchaser that Mr. Smith agreed to the terms. But the defendant afterwards wrote to the plaintiff that he would not agree, and that the matter must fall through. The defendant now refused to pay commission, and the plaintiff brought this action to recover £128 on the ground that he had done all he was called upon to do, as he had found someone ready, willing and able to purchase the lease, and this had been agreed to by the defendant. The defence was that the defendant was not liable to pay the commission, as no complete contract was ever made with Mr. Watson, and that it was

a mere negotiation, which went off as Mr. Watson's requirements were too numerous.

His Lordship, after hearing the evidence, gave judgment, saying he had no doubt that his judgment must be for the plaintiff. On the correspondence it was almost conclusive that the contract was completed, but the evidence of Mr. Watson's agent placed the matter beyond all doubt. They had agreed on the terms, though no doubt there was a discussion about certain things, but those were outside the agreement, and he was obliged to say that he thought he was justified in doubting the contention which the defendant now set up. In his opinion, as far as the defendant and Watson were concerned, there was a contract, and the plaintiff did all he ought to have done to earn his commission. He therefore gave judgment for the plaintiff for the amount claimed, with costs.

The defendant appealed against this decision, and after the case had been argued at great length in the Court of Appeal (December 6, 1890) the Master of the Rolls and Lord Justices Kay and Lopes reversed the decision of Mr. Justice Grantham, and gave judgment for the defendant.

Counsel for the plaintiff: Mr. Kemp, Q.C., and Mr. C. G. Ellis; counsel for the defendant: Mr. Winch, Q.C., Mr. J. L. Walton, Q.C., and Mr. A. Powell.

Gray and another v. Hayward.

Birmingham County Court, July 9, 1890.—Before his Honour Judge Chalmers and a Jury.

Reported *ESTATES GAZETTE*, Vol. xxxvi., p. 35.

First introducer entitled to commission—Several agents employed.

In this action Messrs. Gray and Walker, auctioneers, of Birmingham, were suing to recover £60 for commission.

It appeared that Mr. Hayward was the mortgagee of the Royal Hotel, Sutton Coldfield, and wished to dispose of his interest. Messrs. Gray and Walker introduced a client of theirs, Mr. William Horton, to Mr. Hayward with a view to purchase, and a conversation took place, in the course of which it was agreed that if anything came of the negotiation Messrs. Gray and Walker's commission should be paid by defendant. The negotiation with Mr. Horton fell through, but Mr.

Hayward supplied the plaintiffs with particulars of the property. Subsequently Mr. C. Showell, of the firm of Showell and Sons, saw Mr. Gray, and a conversation took place with respect to the Royal Hotel. As the result of this, the hotel was purchased by Mr. Showell and a Mr. Wilkinson. The negotiations were concluded by Messrs. Thomas and Bettridge, auctioneers, of Birmingham, who made the valuation of the contents of the hotel, but plaintiff claimed the commission as having introduced the purchaser. When Mr. Hayward was asked by Mr. Gray to pay the commission, he replied, "You were not in it. It is true you introduced the matter, but Mr. Thomas finished it," and added that he did not want to pay two commissions, having paid Messrs. Thomas and Bettridge already.

Mr. Joseph Gray gave evidence of the interviews he had with the defendant, and, in cross-examination, denied having spoken excitedly about the matter with the result that defendant withdrew the business from him. He stated that Mr. Hayward had never at any time given him to understand that his authority to sell the property was revoked.

Mr. Charles Showell also gave evidence.

The defence set up was that, though Mr. Gray might have mentioned the matter to Mr. Showell, that was not an effective introduction which led to the sale of the hotel. The sale of the business was in the hands of a large number of agents, and the effective introduction was made by Messrs. Thomas and Bettridge. If the defendant was to pay commission to all of the agents, he would not have much of the purchase-money left.

In the result the jury found a verdict for the plaintiffs for the amount claimed.

Mr. Stubbins appeared for the plaintiff, and Mr. Vachell for the defendant.

Horncastle and another v. Pigot.

Queen's Bench Division, July 12, 1890.—Before Mr. Justice Day.
Reported *ESTATES GAZETTE*, Vol. xxxvi., p. 59.

Withdrawal fee—Alleged unreasonable delay in finding purchaser.

This was an action to recover £210, the amount of withdrawal fee payable by the defendant, pursuant to the following agreement:—"To Messrs. Horncastle and

Pember, auctioneers and surveyors. *Re West Hall Estate.* I hereby authorise and instruct you, as my agents, to dispose of the above estate for me, as per particulars furnished by Lady Pigot, at a price to be agreed upon, say £34,000. I agree to pay you a commission of £800 for effecting the sale, which I authorise and request the purchaser to pay to you at the time of executing the deeds. If the proposed mortgage and insurance are decided upon, then I agree to pay a procurator fee of 2 per cent. on the sum advanced. The business is placed solely in your hands, and all parties are to be referred to you to negotiate with." The above was signed by the defendant, Sir Robert Pigot, and witnessed by Elizabeth Campbell. After the signature there was the following postscript;—"If the property is withdrawn, I will pay you a withdrawal fee of 200 guineas." The plaintiffs' case was that the above agreement had been entered into because the estate had been put into the hands of other agents; that the agreement with the postscript was taken away by Lady Pigot to be signed by the defendant, who was an old gentleman above 88 years old; and that after the plaintiffs had devoted time and labour to find a purchaser for the estate, the defendant sold part of the estate, and thereby took the sale of the estate out of their hands.

The defence was that the postscript had been added after the signature, and that even if it was there, there was an implied condition that the plaintiffs should procure a purchaser within a reasonable time, and not having done so, the defendant was justified in withdrawing the sale of the estate from them. The evidence for the plaintiffs showed that they had used endeavours to find a purchaser for the estate, and had written a number of letters and had a number of interviews, and that the postscript was attached to the agreement before it was signed. For the defence Lady Pigot was called, and said she did not see the postscript to the agreement when her husband signed it.

Mr. Justice Day, in giving judgment, said he had to construe the agreement, not to make it. He thought it such as no commonly prudent person ought to have signed, and such as ought not to have been presented for signature. His duty was to ascertain whether it was made. There was no evidence that the postscript was not there when signed. It had been sworn to by two witnesses, one who wrote it, and another who said

it was there when he received it back from the defendant. He saw nothing on the face of the document itself to corroborate the suggestion of the defendant. He came to the conclusion that it was not shown that the postscript was not there when the agreement was signed. He could find no evidence that an unreasonable time had elapsed between the signing of the agreement and the sale of the estate. It was clear that the agreement was withdrawn by a sale of a part of the estate. He felt he must find for the plaintiffs for the amount claimed, with costs.

Counsel for the plaintiffs: Mr. C. C. M. Plumptre and Mr. Lacey Smith; counsel for the defendant: Mr. Colam.

Green and Son v. Stiles.

Brompton County Court, July 8, 1890.—Before his Honour Judge Stonor.

Reported ESTATES GAZETTE, Vol. xxxvi., p. 59.

Ultimate purchaser receiving particulars of auction—First introduction.

The plaintiffs, Messrs. Green and Son, auctioneers, of High Street, Hammersmith, sought to recover commission and costs out of pocket incurred on the sale of two houses in Wingale Road, Hammersmith. The property in question was submitted to public auction on February 25, 1890, and the reserve was fixed at £565. At the sale the highest bid was £550; therefore the property was bought in. The defendant was on March 9 interviewed by a Mr. Pedler, who had bid £550 at the auction, and who knew the defendant was owner, and he offered to buy at £534. The defendant did not then sell, but on March 10 he wrote to the plaintiffs that unless they sold the property by March 13 it would be taken out of their hands, and on March 14, one day later, he sold to Mr. Pedler at £534, and thereupon the plaintiffs claimed commission.

Mr. Pedler gave evidence, and stated in cross-examination that his attention to the property was called by receiving printed particulars and conditions of sale announcing the auction.

On behalf of the defendant it was urged that plaintiffs had no claim, as defendant really sold the property personally, but his Honour, in giving judgment, said

that it was clearly proved that the plaintiffs were instrumental in selling the property, and he therefore found for them for the full amount claimed.

Barnett v. Brown and Co.

Queen's Bench Division, August 4, 1890.—Before Lord Justice Lopes.

Reported ESTATES GAZETTE, Vol. xxxvi., p. 131.

Two claimants to commission—Effective introduction.

This was an interpleader issue directed to be tried to determine the right to a sum of £106 10s., which had been paid into Court by Mr. Cuthbert Quilter, the defendant in an action brought against him by the present plaintiff, Mr. Barnett, to recover the above sum by way of commission alleged to be due to the plaintiff in respect of the sale of a lease of a house belonging to Mr. Quilter.

The case raised an interesting point as to the claim of house agents to commission on the sale or letting of houses. The plaintiff, Mr. Barnett, and the defendants, F. R. Brown and Co., both carried on business as house agents in the neighbourhood of Mayfair. Mr. Quilter, in the early part of 1889, was desirous of selling the lease of a house in Norfolk Street, Park Lane, and both the plaintiff and defendants were in communication with him on the matter. Before April, 1889, the plaintiff Barnett had been in correspondence with a Mrs. Thomas as to letting or selling her a house in the neighbourhood, and on April 25, 1889, the plaintiff gave Mrs. Thomas an order to view the house in Norfolk Street, and Mrs. Thomas went over the house after receiving the order. On April 26 Mrs. Thomas applied to the defendants, Brown and Co., for orders to view houses, and received from them an order to view the house in question, and she appeared again to have gone over the house upon receiving the order. Evidence was given on behalf of the plaintiff that he had made and fulfilled several appointments with Mrs. Thomas to view the house, and had been in correspondence with Mr. Quilter as to the terms of the sale. Nothing, however, resulted from what was then done, and Mrs. Thomas took another house in Hill Street through the plaintiff. As to this house some difficulty arose, and after taking possession Mrs. Thomas had at

once to leave it again, and appeared again to have been looking for a house, negotiating with that object with the defendants, Brown and Co., and terms respecting the house in question in Norfolk Street were again the subject of discussion between Mrs. Thomas, Messrs. Hampton and Sons, of Pall Mall (who were acting on her behalf), and the defendants. Communications also took place between Mrs. Thomas and the plaintiff, which, however, ceased at the end of July, Mrs. Thomas not answering the last few letters written by the plaintiff on the question, and she did not after July carry on any further negotiations with him. She and Messrs. Hampton continued the discussion of terms with the defendants, which finally resulted in terms being arranged between Messrs. Hampton on her behalf, and the defendants, Brown and Co., on Mr. Quilter's behalf, and the purchase by Mrs. Thomas was carried through on those terms. The defendants then claimed the commission represented by the above-mentioned sum from Mr. Quilter. The plaintiff hearing that the sale had been carried out, also put forward a claim for the commission upon the ground that his firm had been the first to introduce Mrs. Thomas to Mr. Quilter, and "having introduced a purchaser" was entitled to the commission. The defendants contended that they alone had been instrumental in definitely arranging the terms and carrying out the sale, and that even assuming that the plaintiff had been the first to introduce Mrs. Thomas, such introduction had not resulted in the carrying out of the sale.

On behalf of the plaintiff it was contended there could be only one "introduction" in a case of this kind, and that it was a contradiction in terms to say there had been two. The plaintiff had brought the fact that the house was to be disposed of to the knowledge of Mrs. Thomas, and there was no evidence that she was ever in the house except on that introduction.

The learned Judge, however, remarked that he thought the defendants introduced her also, and that there "might be 50 introductions." Proceeding to give judgment, he observed that the question to be decided was whose introduction had brought about the purchase. He thought it was brought about by the introduction of the defendants. The first introduction (that of the plaintiff) resulted in nothing; the second (that of the defendants) resulted in a sale and entitled

the defendants to the commission, and he gave judgment for them with costs.

Counsel for the plaintiff: Mr. Clavell Salter; counsel for the defendants: Mr. Kemp, Q.C., and Mr. Percy Gye.

Clark and another v. Deuchar.

Newcastle-on-Tyne Assizes, August 6, 1890.—Before Mr. Justice Charles.

Reported ESTATES GAZETTE, Vol. xxxvi., p. 131.

Introduction not effective—Claim for commission not maintainable.

In this action Messrs. Clark and Robson, solicitors, Newcastle, claimed from Mr. Farquhar Deuchar, hotel proprietor, Newcastle, commission on the purchase price of a public-house, which the plaintiffs said they had introduced to the defendant. According to the plaintiffs' case, it appeared that Mr. Deuchar asked Mr. Clark if he could introduce any public-house property to him, and Mr. Clark asked what his firm would get out of it if he did. Mr. Deuchar promised them the conveyancing work, and Mr. Clark introduced two public-houses—one the Dodd's Arms, at Elswick, and the other the Stack Hotel, at Walker. It was the latter house which was now in question. Mr. Clark having learnt that the Stack Hotel had been sold, and that the conveyancing had been given to somebody else, reminded Mr. Deuchar of their conversation. Mr. Deuchar said he had forgotten his promise, and offered Messrs. Clark and Robson a present of £25. Mr. Clark said: "We do not want any present; we are either entit'ed to it or we are not." The house was sold for £8,000. The commission on that, at 1 per cent., would have been £80, and if the plaintiffs had had the conveyancing, they would have had £115 additional.

Mr. Edward Clark having given evidence at great length in support of the claim, was cross-examined.

The following questions were put to him among others: Did you regard this as a business transaction?—Entirely. Do you consider the transaction of commission business as part of your professional employment?—Certainly; it is provided for in the Act itself. Do you devote Sunday nights to the commission part?—Any time I can make money, I am perfectly willing. I suppose it is part of a solicitor's duty to keep a diary

recording his business transactions?—It is, if business is going to ensue. Did you make any note of this arrangement?—I did not, because Mr. Deuchar told me he would not buy, owing to the lease.

Mr. Charles H. M. Robson also gave evidence with regard to conversations in plaintiffs' office.

For the defence Mr. Deuchar, Mr. Tweddell and Mr. Dickinson, of the firm of Messrs. Mather, Cockcroft and Co., were called, and after hearing their evidence, Mr. Justice Charles, in giving judgment, said the whole question whether the plaintiff was entitled to recover or not depended, first, on the terms of the promise which was made to him by the defendant; and, secondly, upon whether there had been any performance by the plaintiff of his part of the contract which was then alleged to have been entered into between the two. He had come to the conclusion that the plaintiffs were entitled to nothing. The contract had been proved substantially, but the difficulty was this, that Mr. Deuchar did not buy the hotel through the plaintiffs. Mr. Deuchar did not tell Mr. Clark that he knew of the hotel being for sale, and the reason he gave for his silence was not very satisfactory. But there could be no manner of doubt that, in point of fact, Mr. Deuchar did know of the hotel, and had been negotiating with Mr. Tweddell for the purchase of the hotel. His Lordship gave judgment for the defendant, with costs.

Counsel for the plaintiffs: Mr. John Strachan; counsel for the defendant: Mr. J. L. Walton, Q.C., and Mr. Lloyd.

Cane and Co. v. Moon and Gilkes and Massey and Co.

Lambeth County Court, September 25, 1890.—Before his Honour Judge Powell.

Reported ESTATES GAZETTE, Vol. xxxvi., p. 299.

Firm introducing business entitled to commission, though another firm also employed.

This was an action brought by Messrs. Cane and Co., house agents and auctioneers, of Peckham, to recover commission alleged to be due to them for services rendered to the defendants in procuring a tenant for premises situate in Peckham. They had been instructed by the owners of the property (Messrs. Moon and

Gilkes) to find a tenant for the house in question, and ultimately they found a person who was desirous of taking the house, but owing to some delay on the part of the defendants the matter fell through. In May, 1890, a Mrs. Thompson sent to their office asking for an order to view, which was granted. About this time the plaintiffs received a letter from Messrs. Moon and Gilkes, stating that Messrs. Massey had opened an estate office almost opposite the premises in question, and as it would be more convenient for intending tenants to get the key from them, requested them (the plaintiffs) to hand the key over to them. The letter went on to say that there was no revocation of Messrs. Cane's authority to do their part in effecting a tenancy, and whichever party was first successful would, of course, be paid the commission. It was ultimately discovered that Mrs. Thompson and her husband had become the tenants, and that Messrs. Massey had received the commission on the transaction. The plaintiffs now contended that as they were the persons who first introduced Mrs. Thompson, they were entitled to the commission in spite of the fact that the transaction was completed with Messrs. Massey.

Mrs. Thompson was called, and admitted that she went first to the plaintiffs and procured from them an order to view, but she put it in her pocket and thought no more of the matter. A week later she went with her husband to the premises, when she saw Messrs. Massey's board, and accordingly went to their office and obtained the key.

Mr. Massey was also called, and said he claimed to be entitled to commission on the ground that Mrs. Thompson came to him and got an order to view, and he took her over the house. He was not aware that she had previously been to Messrs. Cane.

His Honour, in giving judgment, said it was perfectly clear that the agent who first introduced a tenant was the one to whom commission was due. It was admitted by Mrs. Thompson that she first went to Messrs. Cane, so, therefore, he was of opinion that they were entitled to the commission. Judgment would be for the plaintiffs, with costs, but he thought it would be only fair if the parties divided the amount equally, and in the event of their agreeing to do so, he would give judgment without costs on either side. The plaintiffs, however, having suggested the adoption of that

136 COMPENDIUM OF COMMISSION CASES.

course before the action was brought, now declined to entertain it.

Judgment for the plaintiffs accordingly.

Mr. Charles appeared for the plaintiffs.

Richards and Co. v. Hudson.

Westminster County Court, October 22, 1890.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxvi., p. 394.

Clerk to house agents claiming commission.

This was an action brought by Messrs. Richards and Co., house agents and auctioneers, to recover commission alleged to be due on the sale of a house at 39, Lower Belgrave Street.

The plaintiffs had been instructed to find a purchaser for the defendant's house, 39, Lower Belgrave Street. The matter went on for six or eight months, during which time plaintiffs sent a number of persons to view. It came to their knowledge that the house had been sold to a Mr. Mills, and from inquiries they had reason to believe that the purchaser was introduced by their instrumentality. A communication was then sent to the defendant Hudson asking for particulars, and the reply was to the effect that the purchaser was introduced by a Mr. Wyatt. Wyatt was a clerk in the employ of the plaintiffs, and was actually in the plaintiffs' employ when the transaction took place, although about to leave.

Mr. Barron, of the firm of Richards and Co., said that his firm was instructed by the defendant to procure a purchaser. A large number of applicants were sent to view the premises, and ultimately they were sold to Mr. Mills. Wyatt, who now claimed the commission, was at that time in the firm's employ as clerk, and he had not the slightest title whatever to his claim, having made improper use of the books in the office.

Mr. Hudson, the defendant, was called, and denied that he ever had any dealings with the plaintiffs. The only person he saw in the matter was Wyatt, and he naturally assumed that the commission was payable to him. He had always been ready and willing to pay, but he feared that if he paid one party the other one would sue him also.

Mr. Alfred J. Wyatt said that Mills, who purchased the premises, was a private friend of his and that the transaction was absolutely separate from the office altogether.

His Honour in the result said that he was satisfied that the plaintiffs were entitled to the money, and judgment would be given accordingly.

Bland v. Lansdown.

Lord Mayor's Court, October 22, 1890.—Before the Assistant Judge and a Jury.

Reported ESTATES GAZETTE, Vol. xxxvi., p. 420.

Plaintiffs not really introducers.

This was an action to recover £28 commission on the introduction of a tenant for the shop and basement of 155, Fenchurch Street, formerly occupied by the defendant.

The plaintiffs, Messrs. Bland and Campion, were auctioneers and estate agents. In June, 1890, the defendant was desirous of disposing of his business, and placed the matter in the hands of Messrs. Richard Ellis and Son, auctioneers. Subsequently, on June 7, Mr. Bland, a member of the plaintiff firm, called upon him, and the point at issue turned upon what took place between Mr. Bland and the defendant at this interview. According to Mr. Bland's statement the defendant said it did not matter to him who introduced a tenant. In either case he should pay Messrs. Ellis—in whose hands he had previously put the matter—their commission, but if the plaintiffs introduced a tenant he would pay them the same commission—viz., 5 per cent. on the first year's rent and 5 per cent. on the premium. He (Mr. Bland) mentioned the name of a Mr. Randall, among others, as a likely person to take the premises, and the defendant told him that that name had not been mentioned to him by Messrs. Ellis. Communications then passed between the plaintiff and Mr. Randall, and ultimately the premises were taken by Mr. Randall, at a rental of £210 per year and a premium of £225, on which the plaintiffs claimed commission.

The defendant's version of the interview was that Mr. Bland never disclosed the fact that he was an agent, and thinking he was a purchaser, he (defendant)

showed him over the premises and gave him particulars. Subsequently, when he discovered that Mr. Bland was an agent, he declined to allow the business to be placed on his books, having placed the matter in Messrs. Ellis's hands.

The purchaser, Mr. R. Randall, was called, and said that before receiving any communication whatever from the plaintiffs, he had inspected the premises, and that he was subsequently introduced to Messrs. Ellis, through whom he completed the purchase.

The jury found for the defendant.

Counsel for the plaintiffs: Mr. H. F. Dickens; counsel for the defendant: Mr. L. Glyn.

Chesterton and Sons v. Ackers.

Queen's Bench Division, November 3, 1890.—Before Mr. Justice Grantham.

Reported ESTATES GAZETTE, Vol. xxxvi., p. 442.

First introducer entitled to commission—Alleged breaking off of negotiations set up.

This claim for commission was made by Messrs. Chesterton and Sons, the estate agents of 22, Lower Phillimore Place, Kensington, on the sale of the house No. 5, Prince of Wales Terrace, Kensington, and the furniture contained therein. The defendant had purchased the house through the plaintiffs' agency, and towards the end of 1888, being desirous to re-sell, he instructed the plaintiffs to find a purchaser. Terms were arranged, but, no private treaty sale being effected, the property was offered to public auction. About four days before the proposed sale the plaintiffs received a call from a Dr. Warner, who intimated that he was desirous of purchasing, and asked for particulars. No sale being effected at the auction, the defendant in May, 1889, wrote to the plaintiffs saying that after a fortnight from the date of the letter they would cease to be his sole agents. At the end of that period the defendant instructed Messrs. Howell, Son and Bonnin, of 116, Cromwell Road, to find a purchaser. Negotiations were continued between Messrs. Chesterton and Dr. Warner until about the middle of September. Nothing came of the matter until the early part of November, when Dr. Warner became the purchaser; but the purchase was actually completed by Messrs. Howell, Son and Bonnin.

This coming to the knowledge of Messrs. Chesterton, a claim for commission on the sale was sent to the defendant by them. He, however, sent a cheque for £23 5s. 8d. for auction and out of pocket expenses. The action was now brought to recover the actual commission on the sale (which was £3,600 for the house and £300 for furniture), being 5 per cent. on first £100, and 2½ per cent. on remainder, with 5 per cent. all round on furniture.

Dr. Warner, on behalf of the defendant, deposed that when he ceased negotiating with Messrs. Chesterton he had given up all ideas of taking the house, but Messrs. Howell, Son and Bonnin re-introduced it for his consideration.

Ultimately, Mr. Justice Grantham gave judgment for plaintiff for the amount claimed less £2 10s. on the first £100, as Messrs. Chesterton had agreed to accept 2½ per cent. all round in the first instance in the event of a sale.

Counsel for the plaintiffs: Mr. Aspland, Q.C.; counsel for the defendant: Mr. R. J. Wright.

Robins, Snell and Gore v. M'Kay.

Westminster County Court, November 12, 1890.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxvi., p. 470.

Several agents employed—Notice given when letting effected by one of them—Defendant only liable to successful agent.

The plaintiffs in this case sought to recover £2 10s., being half commission on the letting of the defendant's house, and a further sum of £1 7s. for printing and advertising.

A member of the plaintiffs' firm said the defendant called at their office about the letting, and witness advised him to have 300 copies of particulars printed, and have copies sent to house agents, in which case they (the plaintiffs) were to have half the commission if the property was let through another agent, and the whole of it if they were personally successful. That course was agreed to, and ultimately the house was let by Mr. Whiteley, of Westbourne Grove.

The defendant was called, and denied all knowledge of the printed particulars, and swore he never authorised the plaintiff to have them done. He did, however,

authorise the advertisements, and had paid a sum in respect of them into court. In order to let his house quickly he went to seven or eight agents, all of whom tried to let it, but when the house was let by Mr. Whiteley he (defendant) gave the other agents notice to that effect, and there was an end of the matter.

His Honour said the defendant was not liable, and the amount paid into court was all he was bound to pay. Judgment would therefore be for him, with costs.

Giles v. White.

Westminster County Court, January 16, 1891.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 55.

Rate of commission in dispute.

The plaintiffs, house agents in High Street, Kensington, sued the defendant to recover $7\frac{1}{2}$ per cent. commission on the letting of the mansion 8, Queen Anne's Gate, and a further sum of 5 per cent. on a premium of £500.

It appeared that the defendant, who held the premises under a lease from the superior landlord, had written to the plaintiffs giving them instructions to find a tenant. The letter contained full particulars of the property, and stated that the lease had 11 years to run. The rent required was £300 a year, and a premium of £500 would also be required. The plaintiffs introduced the mansion to a committee of gentlemen, who were desirous of obtaining the premises for a club, and ultimately they agreed to take the place on the terms above named, but when the lease was produced, it was found that instead of having 11 years to run, it had only $5\frac{1}{2}$. The committee then refused to pay so much as £500 premium, but after considering the matter, agreed to give £250, which amount the defendant consented to take. When the matter was finally settled, the plaintiffs sent in their account, which included a commission of $7\frac{1}{2}$ per cent. on the first year's rental, and 5 per cent. on the £500 premium which the committee would have paid in full had the lease been as represented. The defendant then disputed almost the whole of their account, and contended that all he was liable to pay was 5 per cent. on £250. The plaintiffs did not adopt that view, but took proceedings in the High Court, where judgment

was entered for the sum which the defendant admitted was owing, and the other matters in dispute were remitted to his Honour Judge Bayley.

The learned judge now said there really was no defence. The plaintiffs had received certain instructions in their capacity as house agents, and had carried them out very properly. They had certainly earned their commission on the first year's rent, and they were entitled to commission on the premium as though £500 had been paid, as it was no fault of theirs that the amount was reduced. Judgment would be for the plaintiffs for the full amount claimed, with costs.

Brunt v. Mellor.

Macclesfield County Court, January 8, 1891.—Before his Honour Judge Hughes.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 84.

Verbal agreement—In the absence of special arrangement an auctioneer cannot act as paid agent both for vendor and purchaser.

The plaintiff was an auctioneer at Macclesfield, and was suing for commission on the sale of three shops in Chestergate. They were sold for £1,750, and at 1 per cent. the commission amounted to £17 10s. Plaintiff gave evidence to the effect that when defendant first saw him about the property he told him to offer the three shops for sale by private treaty, the price being £2,000. Subsequently defendant gave instructions to offer the property by public auction, and this was done. The property was not sold, as it did not reach the reserve of £2,000. The fee he charged for this sale was two or three guineas, but defendant only paid £1 10s. In March, 1890, he saw Mr. Mellor again, and received instructions to offer the property by private treaty, and the terms were 1 per cent. commission. Plaintiff took a Mr. Davenport to Mr. Mellor, and they went over the property. The price asked was £2,000, but Mr. Davenport offered £1,500, as it was in a dilapidated condition. This was refused. Subsequently Mr. Davenport gave £1,750. There was only one person in the market for property of that class, and plaintiff was the means of inducing him to purchase it. When he asked Mr. Mellor for his commission he said he could not afford to pay, as he had lost on his property. He told defendant that he could not afford to pay for a

license and keep clerks and an office open for his convenience without being paid.

Cross-examined, the plaintiff stated that he did not, to the best of his recollection, agree to sell the property for £5 commission; there were other lots also offered at the auction. Mr. Mellor did not tell him if he could find a customer for the Chestergate property for £2,000 he would give him £5. Mr. Davenport was a cousin of his, and he had negotiated a good many purchases for him. Being asked whether it was not customary for estate agents to have these agreements in writing, the plaintiff replied, "It is not always the case in the North of England. It is down South, in Croydon and all round London, where I have a son in the business. We ought to do it, I admit, but it is not usual."

Mr. Henry Davenport was called. He stated that the property was first introduced to his notice by Mr. Brunt, who had bought a good deal of property for him, but he had not paid Mr. Brunt any commission, as he did not pay commission when he was buying.

For the defence it was submitted that plaintiff having admitted acting as agent for Mr. Davenport, could not also be agent for Mr. Mellor, and cases were quoted in support of this.

His Honour concurred in this view, and said the case was one of some difficulty, but on the whole he was driven to the conclusion that it came within the scope of the recent cases as to agency. The plaintiff practically acted as agent for both parties, and could not recover. There was nothing in writing. There was no conflict of evidence. Plaintiff gave his evidence in a straightforward manner, and that evidence, and that of Mr. Davenport, had forced itself upon him. Without intending to commit any offence, or to deal in any unscrupulous way, such as occurred in the cases quoted, yet the relations between them were of such a character that he could not resist the conclusion that the plaintiff was exceeding his authority—not his authority as auctioneer, for there it was perfectly clear that if he had sold, he would have been entitled to commission, but in his subsequent relations. According to the facts given in evidence, he had convinced him that he was agent for both parties, and therefore could not recover this £17 10s. Judgment was given for the defendant, with costs.

Mr. Hastings appeared for the plaintiff, and Mr. Sheldon for the defendant.

Woodward v. Shepherd.

Westminster County Court, January 5, 1891.—Before his Honour Judge Bayley.

Reported *ESTATES GAZETTE*, Vol. xxxvii., p. 123.

Procuring a lessee and procuring an assignee—Agent doing all he undertook to do.

The plaintiff, a house agent, sued the defendant for £15, commission on the letting of the defendant's house, 3, Curzon Street, Mayfair. His case was that at his solicitation the defendant placed the house on his list. She gave him full particulars, stating that the rent was £100 a year, with a premium of £150 for fixtures. She agreed to pay the usual commission, and he told her that it would be at the rate of $7\frac{1}{2}$ per cent. on the first year's rent, and 5 per cent. on the premium. The defendant agreed to these terms, and ultimately plaintiff let the house to a Mrs. Wyndam, who took an assignment of the lease. After the matter was settled, the account was sent in, and then for the first time the defendant denied her liability.

For the defence it was stated that the plaintiff had not been given specific instructions to procure a tenant, and that as what the plaintiff had done was to bring about an assignment of the lease he was not entitled to charge commission as for letting.

The learned Judge, however, asked what the difference was? The plaintiff had done all he undertook to do, and had earned his commission, both on the rental and on the premium. His Honour added, "Among the large number of commission cases which come into this Court, a defence of this sort crops up about once a year, but there is absolutely nothing in it." He gave judgment for the plaintiff for the full amount of his claim, with costs.

Mason v. Dixie.

Queen's Bench Division, February 11, 1891.—Before Mr. Baron Pollock.

Reported *ESTATES GAZETTE*, Vol. xxxvii., p. 150.

Disputed authority to employ agent—Husband and wife.

In this action Mr. W. B. Mason, auctioneer and estate agent, of Windsor, sought to recover £200 com-

mission from Sir Beaumont Dixie, in respect of the sale of certain property near Windsor, know as The Fishery.

The plaintiff, it appeared, had from time to time let The Fishery for the defendant. In 1889 the present Dowager Duchess of Sutherland, then Mrs. Blair, purchased the adjoining estate, know as The Willows, and requiring more land, asked the plaintiff if she could purchase a portion of The Fishery Estate. He approached Lady Dixie on the subject, and she, in replying by letter, stated that the terms of the purchase of the property would not allow of it, but added that Sir Beaumont would be willing to dispose of the whole property for £15,000, including the furniture. Plaintiff forwarded this offer to Mrs. Blair, who was then in America, but receiving no reply the matter went off. In 1890, however, the estate was purchased by the late Duke of Sutherland for £11,000, and plaintiff claimed commission on that sum, contending that he had introduced the parties, and was therefore entitled to be paid commission. For the plaintiff it was submitted that authority had been given him to enter this property on his books as for sale, and on the other hand, for the defendant, it was urged that no such authority had been given at any time, as when Lady Dixie had done so, she acted without the authority of her husband.

The plaintiff's counsel, in opening the case, read a voluminous correspondence which had passed between the parties in reference to The Fishery, and the whole of which had been conducted by her ladyship.

Mr. Mason having given evidence generally in support of his case said, in reply to a question from the learned Judge, that it made no difference as to the amount of commission whether the whole of the arrangements were carried out by him, or whether he merely introduced a purchaser. His commission was 5 per cent. on the first £100, 2½ on the next £4,900, and 1½ on all above that amount. His rate of commission was on the auctioneers' and valuers' scale, the same as used by Messrs. Farebrother, Ellis, Clark and Co., Messrs. Debenham and Co., and Messrs. Walton and Lee. It was not correct that he was endeavouring to obtain a commission from both parties.

It was stated on behalf of the defendant that he would not dispute that if the plaintiff was entitled to anything he was entitled to the whole of his com-

mission. Four points, however, were raised: (1) That there was no employment of Mr. Mason; (2) If employed, there was no authority for the employment; (3) That he did not effect the sale; (4) That he was not instrumental in bringing about the sale.

Lady Florence Dixie was called. She stated that she had had dealings with the plaintiff for the letting of The Fishery from time to time, but only on one occasion had she authorised him to put it on his books for sale. When she was asked whether she was willing to sell a portion of the property, she showed the letter to Sir Beaumont, and he replied that the terms on which he purchased the property would not allow of his dividing it, even if he wished to do so. He directed her to write to Mr. Mason to that effect, which she did, adding without his authority a rider, the substance of which was that Sir Beaumont would not be indisposed to sell right out for £15,000. With the exception of one person, who was not sent by Mr. Mason, no one ever came to view the premises with the idea of buying. Mrs. Blair was not a personal friend of hers at that time. In 1889, hearing that the late Duke of Sutherland had married Mrs. Blair, she wrote to the Duke telling him that she had an offer from a building firm for The Fishery, and asking him whether he wished to buy it, mentioning the sum that was offered. She received a reply stating that the price was too high. She did not tell Sir Beaumont that she had written until she had received the reply. He at first refused to sell the property, but afterwards acquiesced in her wishes, and the property was disposed of to the Duke.

The Duchess of Sutherland said that in October, 1888, she purchased The Willows, and afterwards wishing to purchase some more land, she sent for Mr. Mason with regard to purchasing a portion of The Fishery Estate. On receiving the answer declining to sell, the negotiations dropped. At that time she had no intention of purchasing the whole of the estate. The negotiations with regard to the purchase of the estate were commenced by Lady Florence Dixie.

The Duke of Sutherland gave evidence in substantiation of that of the previous witnesses, and Sir Beaumont Dixie, the defendant, was called and said that he owned The Fishery from 1878 to 1890. When Lady Florence showed him the letter with reference to the sale of a portion of the property, he told her that he had

146 COMPENDIUM OF COMMISSION CASES.

no power to sell. He did not give her authority to tell Mr. Mason that he would sell the whole for £15,000. In cross-examination the defendant said that Lady Florence conducted a good deal of his business and correspondence; he himself did not write a single letter in reference to the sale of The Fishery. The subject was never mentioned between them until Lady Florence brought the Duke's reply to him, and then he authorised her to conduct the negotiations.

At the conclusion of the evidence the learned judge reviewed the facts of the case, and gave judgment for the defendant, with costs.

Counsel for the plaintiff: Mr. Bray and Mr. Rawlinson; counsel for the defendant: Mr. Winch, Q.C., and Mr. Sankey.

Nicholas v. Watkins.

Reading County Court, February 5, 1891.—Before his Honour Judge Lushington and a Jury.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 150.

Denial of retainer, and that purchaser was introduced by plaintiff.

This action was brought by Mr. W. R. Nicholas, auctioneer and estate agent, of Reading, to recover the sum of £14 5s., claimed by the plaintiff for commission on the sale of the lease of the defendant's premises, which the People's Investment Company, Limited, had agreed to purchase. The claim had been amended by the plaintiff (in consequence of the actual amount of the purchase-money being less than the sum asked for by the defendant from the plaintiff) to the sum of £37 10s. The defendant denied having instructed the plaintiff, and urged as a second plea that the sale was not brought about by anything done by the plaintiff.

Mr. Watson, the plaintiff's managing clerk, gave evidence to the effect that he had called upon the defendant, who said he wished to dispose of the lease of his premises, No. 50, Broad Street. The defendant gave him particulars and took him over the premises, but they were to arrange about commission, as defendant would not pay the 5 per cent. which was quoted. A day or two afterwards he again called on defendant and settled that the commission should be $2\frac{1}{2}$ per cent. on the purchase-money, and 5 per cent.

on one year's rental, which the defendant said he would not mind paying. Advertisements were inserted in the newspapers, in consequence of which a Mr. McIlroy wrote to the plaintiff for and received particulars and an order to view, and on the same day Mr. McIlroy returned the order to view, stating that the price was too high.

The plaintiff was called to corroborate this evidence.

For the defence, Mr. Kennedy was called to prove that he had heard from Mr. McIlroy that the premises were for sale, and he afterwards called on the defendant and took instructions with regard to a sale and the payment to him of a commission of 2 per cent. It was stated in evidence that Mr. Kennedy (who was general manager and secretary to the People's Investment Company) introduced the defendant's premises to the company, which led to a contract being entered into by Mr. Joseph Morris, the chairman of the company, of which Mr. McIlroy was also a director; and further that previous to the date of the contract there was a verbal arrangement for Mr. McIlroy to take a lease of the premises.

The defendant, in his evidence, stated that he could not recollect any interview with the plaintiff's clerk after the first call. He would not, however, swear that there had not been other interviews upon the matter. He denied that he had agreed to pay the plaintiff a commission of $2\frac{1}{2}$ per cent. on the purchase-money and 5 per cent. on one year's rental.

Mr. Joseph Morris was called and gave evidence as to the negotiations and signing of the contract on the part of the company, and Mr. McIlroy also gave evidence for the defendant.

His Honour summed up the case, and the jury found a verdict for the plaintiff for the full amount claimed.

Counsel for the plaintiff: Mr. A. H. Spokes; counsel for the defendant: Mr. A. J. David.

Fredericks v. Floyd.

Watford County Court, February 9, 1891.—Before his Honour Judge Holl.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 171.

Indirect introduction—Commission recoverable—Advertisement

The claim here was for £7 5s., commission on £145, the price at which the plaintiff had succeeded in selling

the defendant's business. The plaintiff was a house agent at Hemel Hempstead, and he stated that in consequence of a message from Mrs. Floyd, he went to see her. She told them that she wanted to sell her business, and that she had been in communication with a person to buy it for £120. She told him that she had not put the matter into anyone else's hands, and on going into it, he told her that he thought he could get her a better price than she had asked. He advertised the business, and a Mr. Hall wrote to him, and he (plaintiff) took him to Mrs. Floyd's. While they were there examining the books, Mrs. Floyd called his attention to a person outside, who had come to see about the business. That person, a Mr. Fryett, came through the information he had received from a person who had answered the advertisement, and he ultimately took the business. Plaintiff therefore applied to the defendant for the commission.

The defendant said that she had agreed with Mr. Fredericks that if she sold the business she was only to pay the cost of the advertisements. She succeeded in selling the business through an advertisement cut from a daily London paper, which had been sent to her by a Mr. Larkin. Mr. Larkin, she admitted, was one of the persons introduced by the plaintiff.

His Honour said that the law in the case was quite clear. Unless there were special terms, the ordinary ways of house agents were acted upon, and the circumstances in this case seemed to point to that. He thought the plaintiff entitled to the commission in equity as well as in law, for he seemed to have introduced about twenty different persons. He accordingly gave judgment for the plaintiff for the amount claimed.

Mr. Annesley appeared for the plaintiff.

Rutter v. Downes.

Lord Mayor's Court, February 24, 1891.—Before the Assistant Judge and a Jury.

Reported *ESTATES GAZETTE*, Vol. xxxvii., p. 226.

Commission—Alleged negligence—Claim and counter-claim.

This was an action brought by Mr. J. Rutter, land agent, of West Norwood, against Mr. C. Downes, a dealer in land, carrying on business at 52, Cheapside, to recover £27 17s. 6d., commission on the introduction of a purchaser of certain property formerly owned

by the defendant. The defendant raised a counter-claim for a similar amount, being money received by the plaintiff from Mr. McKenzie, the purchaser of the property, as commission of which the defendant had no knowledge.

The action arose out of the purchase and subsequent sale by the defendant of some freehold property known as Badger's Hall, Hadleigh, Essex. Defendant purchased the property for £1,000, and after reserving to himself two fields forming the frontage, he instructed the plaintiff to find a purchaser for it, agreeing to give him $2\frac{1}{2}$ per cent. commission on the amount of the purchase-money. Plaintiff found a purchaser in the person of Mr. McKenzie, to whom the property was sold, less the two fields, for £1,115. It was commission upon this amount that the plaintiff sought to recover. The defendant's answer to the claim was that the usual custom had been departed from in the transaction, that the plaintiff negligently conducted the negotiation with the purchaser, and did not obtain the best price he might have got for it, and that his firm of Rutter and Co. received a commission or fee from the purchaser, which he sought to recover back.

The questions left to the jury were whether or not the plaintiff's business at Norwood was separate from that of Rutter and Co. in London, and whether the defendant was aware that when the contract was signed by the purchaser the plaintiff's firm or the plaintiff was to receive a commission from the purchaser?

The jury answered these questions in the affirmative, and judgment was thereupon entered for the plaintiff on the claim and counter-claim.

Counsel for the plaintiff: Mr. Lewis Glyn; counsel for the defendant: Mr. Pickersgill.

Towers, Ellis and Co. v. Corfield (Executor).

Marylebone County Court, February 26, 1891.—Before his Honour Judge Stonor.

Reported *ESTATES GAZETTE*, Vol. xxxvii., p. 226.

First introducer—More than one agent employed.

This was an action brought for the recovery of £32 10s., commission on the sale of No. 4, Princes Terrace, Bayswater, to Dr. Cameron.

Particulars of the property had been furnished by the plaintiffs, and a somewhat protracted negotiation en-

sued, resulting in an offer of £1,100, which was positively declined. This being so, the plaintiffs, in a letter which they wrote their client stated that it would be useless to prolong the negotiations "at present." The plaintiffs subsequently ascertained that Dr. Cameron had become the purchaser at £1,300, the sale having been concluded by Messrs. H. and R. Powell. Upon this the plaintiffs sent in their claim for commission and were met with the statement that two commissions could not be paid. They were, therefore, forced to bring this action.

The learned Judge held that the plaintiffs, being the first to bring the parties together in the relation of vendor and purchaser, were entitled to their commission, and gave judgment for them accordingly, with costs.

Messrs. Powell, in respect of the same transaction, received an honorarium of ten guineas for their services, with costs, the defendant consenting to that arrangement.

Suett v. Dillon.

Devon Assizes, March 6, 1891.—Before the Lord Chief Justice.
Reported ESTATES GAZETTE, Vol. xxxvii., p. 244.

Indirect introduction—Division of commission.

The plaintiff was suing for £58, balance of commission on the sale of Tremerton Castle, and £35 for goods sold and delivered. The defendant set up a counter-claim for £87 17s. 5d., balance of account for money lent and goods sold, and £125 for dishonoured acceptances.

The case for the plaintiff was that it had been arranged between the parties that they should divide the profits they derived through the sale of Tremerton Castle. The defendant bought the Castle at an auction sale, and it was arranged by him and the plaintiff to hand over the property to a Mr. Bryant for a consideration, Mr. Bryant declining to bid at the auction for personal reasons. The "consideration" amounted to £216, and a cheque for that amount was received by the plaintiff, who handed it over to the defendant. The plaintiff argued that his share was £108, but he had already received £50, which reduced his share to the amount of his claim. Plaintiff admitted part of the counter-claim, but disputed the dishonoured acceptances, for which he deposed he had received no value.

Lord Coleridge said that he inclined to the belief that the defendant was the man who really purchased the Castle for Mr. Bryant, and therefore he was entitled to the profit on the transaction. At the same time, it was clear that the defendant would not have been able to get into communication with Mr. Bryant had it not been for the plaintiff, and the latter was entitled to a share of the profits. He (the judge) did not think, however, that the plaintiff ought to receive half of the profits, but rather that he was only entitled to £50 from the defendant. With regard to the bills that had passed between the parties, they were clearly not accommodation acceptances, but ordinary acceptances in discharge of debts due from plaintiff to the defendant. Judgment would be for the defendant for £125, less £30 for the goods sold.

Counsel for the plaintiff: Mr. Duke; counsel for the defendant: Mr. Bucknill, Q.C., and the Hon. Bernard Coleridge.

Clark v. Sandys.

Lord Mayor's Court, March 3, 1891.—Before Sir W. T. Charley and a Common Jury.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 245.

Several agents employed—Two commissions paid—First introducer.

The plaintiffs, Messrs. Samuel B. Clark and Sons, estate agents, sued the Hon. Michael Sandys to recover £20 10s., being commission on the introduction of a tenant of 4, Devonshire Street, of which property the defendant was formerly the owner.

The plaintiffs received particulars of the house, and a board was put up by them announcing that it was to be let. A Mrs. Paget called on the plaintiffs, and she was given particulars and an order to view. Mrs. Paget returned and said she liked the house, but had not quite made up her mind to take it. Some time afterwards, the plaintiffs found that the board which they had put up had been taken down, and the house let. Upon making inquiries, they found that Mrs. Paget had taken the house on the terms that had been given to her by the plaintiffs. Application was then made by the plaintiffs to defendant for commission at the rate of 5 per cent. on the rent, which was £110, and also on the premium of £300—£20 10s. in all. In reply, they received a letter from the defendant, informing

152 COMPENDIUM OF COMMISSION CASES.

them that the purchaser had been introduced by Messrs. Maple and Co., of Tottenham Court Road, to whom the commission had been paid. This was the defence now set up.

The evidence of Mrs. Paget, taken on commission, was read, in which she stated that Mr. Blundell Maple, M.P., had introduced her to the house, and the defendant, in his evidence, said the house was placed on the books of several house agents, including Messrs. Maple, and Mrs. Paget was introduced by the latter firm, who had been paid the usual commission. It was not till after Mrs. Paget took possession that he learned the lady had viewed the house on an order from the plaintiffs.

The jury found for the plaintiffs.

Counsel for the plaintiffs: Mr. C. C. Scott; counsel for the defendant: Mr. Edgar Foa.

Theobalds v. Meakin.

City of London Court, April 10, 1891.—Before Mr. Commissioner Kerr and a Jury.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 370.

Denial of retainer—No instructions given.

In this case the plaintiff, Mr. W. Theobalds, was an architect and surveyor, and the defendant was the owner of certain land, and was engaged in building arrangements with regard to it. The present claim was for commission for obtaining builders to take the land and erect houses upon it. There were three heads under which the claim was made. The first was for £22 10s., for the letting of land at Anerley; the second, £13, for letting land at Alton Road; and the third, £14 10s., the value of certain plans which were made by the plaintiff as a surveyor, and which were given to the defendant, who was also a surveyor, to examine. The defendant had unfortunately lost the original plans, and the consequence was that the plans now sued for had to be made all over again. The transactions took place four or five years before the action was brought, and the reason the plaintiff did not proceed sooner was that though the matter was placed in his hands in 1887 he was only to be paid upon the buildings being erected and the leases granted, by which the defendant could secure the ground rents. In 1884 the defendant was

the owner of the land he referred to at Anerley, and he was desirous of obtaining a builder who would erect certain buildings upon the land. A conversation took place between the plaintiff and the defendant, the result of which was that the plaintiff was to have £22 10s. if he obtained a man who would build. This he did, introducing a Mr. Barnes, and he also alleged that he did the other work claimed for.

The defence was that the defendant never instructed the plaintiff to obtain a builder. He (defendant) advertised the land to let, and he said the plaintiff amongst others answered it, asking for particulars. These were sent him, and it was those which the plaintiff called "instructions." As to Barnes's introduction, the business did not result from any step the plaintiff took.

The learned Commissioner having summed up, the jury found for the defendant.

Mr. Lynden Bell was counsel for the plaintiff, and Mr. Tattershall appeared for the defendant.

Marler and Bennett v. Roberts.

Brompton County Court, April 22, 1891.—Before his Honour Judge Stonor.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 445.

Letting a flat—Rate of commission.

Messrs. Marler and Bennett, the auctioneers and estate agents, sued Mr. J. R. Roberts, a builder, of South Kensington, for commission in respect of letting a flat, at Barkstone Gardens, South Kensington.

The plaintiffs' case was that they let a flat, Barkstone Gardens, on a lease for seven, 14, or 21, years, to Mr. Basil Williams, at £155 a year. On that rental value they claimed 5 per cent. commission, but the defendant disputed the claim on the ground that the usual commission paid for letting flats was 3 per cent., and he paid a sum representing that percentage on the letting into Court. The defendant did not dispute the agency, but contended he should not have to pay more than 3 per cent. for commission.

The Judge decided that 5 per cent. was a reasonable charge, and gave a verdict for the plaintiffs, with costs.

Mr. A. B. Richards appeared for the plaintiffs, and Mr. T. J. Robinson for the defendant.

White and others v. Bainton.

Westminster County Court, April 30, 1891.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 445.

First introducer—Defendant himself selling to party introduced

In this case the plaintiffs were Messrs. White, Druce and Brown, who sought to recover commission alleged to be due on the sale of the business premises No. 203, Strand.

It appeared that in the latter part of the year 1889 plaintiffs had received a communication from the defendant relative to the sale of the goodwill and lease of his business, and immediately took steps to find a purchaser. Among others who were brought into communication with the defendant was a gentleman named Cuthbertson, who was given a card to view. He went to see the premises, and afterwards told plaintiffs that he did not intend to purchase. This was in January, 1890, and from that time to the end of the year the plaintiffs continued doing their best to get a customer. It ultimately came to their knowledge that the defendant had sold the business to Cuthbertson about three months after the first introduction, and as soon as they heard that that was so, they put forward their claim to commission. The claim was based on the usual house agents' charges—namely, $7\frac{1}{2}$ per cent. on the rental, 5 per cent. on the premium, and 5 per cent. on stock and fixtures.

Mr. F. Stanley May, assistant to the plaintiffs, was called, and gave evidence as to the negotiations between his firm and the defendant, and Mr. C. J. Cuthbertson said that he had purchased the business. He certainly was first introduced to the defendant by the plaintiffs, and had it not been for them he probably would never have heard of the defendant.

Mr. Frank Brown said he was one of the plaintiffs, and had taken some part in the introduction of Cuthbertson to the defendant. There was absolutely no doubt that the purchaser was first introduced by his firm.

Witnesses were called to contradict this version of the transaction.

In giving judgment, however, his Honour said that he had no doubt whatever that the plaintiffs were the first to introduce a purchaser to the defendant, and as he

had benefited by their services, he was liable to pay for them. Judgment was accordingly entered for plaintiffs for the full amount of the claim, with costs.

Mr. Tyrrell was counsel for the plaintiffs.

Addison v. Miles.

Lewes County Court, May 12, 1891.—Before his Honour Judge Martineau.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 496.

First introducer—Alleged new transaction.

The plaintiff here claimed commission on the sale of a house at Lewes. He had written to the defendant and asked him if he would pay him a commission if he introduced to him a purchaser for the house. Defendant replied that he would pay him 1 per cent. if he could obtain him £260 for the house. Plaintiff found a friend of defendant's, a Mr. Colwall, but who defendant did not know was wishing to buy a house, and who offered £240. Defendant adhered to his price of £260, and negotiations went on for some time, when they dropped, but afterwards Mr. Colwall wrote direct to defendant and asked him if he would accept £255 for the house. Defendant replied in the affirmative, and the house changed hands. Plaintiff claimed his commission, but defendant contended that the house was sold through entirely fresh negotiations, and that, therefore, he was not liable for commission. He, however, sent the plaintiff a sovereign for his endeavours to get him a purchaser.

His Honour held that the defendant was liable to pay commission as a matter of fact and of law, and gave a verdict for the plaintiff for the amount claimed, with costs.

Major v. Tarrant and Son.

Queen's Bench Division, June 9, 1891.—Before Mr. Justice Lawrance.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 570.

An agreement in respect of which commission can be recovered must be one enforceable by law.

This was a claim for £100 commission on the sale of the defendants' business. The plaintiff carries on a general agency business, and the defendants are printers.

It appeared that in March, 1890, it was proposed that the defendants should sell their business to a projected

company to be called the South London Leader and General Printing and Publishing Company, of which one Adams was to be secretary. An agreement was entered into between the plaintiff and the defendants that in consideration of the plaintiff arranging with Adams or the proposed company for the purchase of defendants' business, lease, goodwill, etc., they should pay the plaintiff £200, one-half in cash and one-half in shares of the company. The plaintiff accordingly entered into negotiations, and secured an offer which he submitted to the defendants, who wrote on March 22 to the plaintiff to the effect that they accepted Adams' offer to purchase the business on behalf of the proposed company for £1,700, possession to be given to the company, and upon certain other terms mentioned in the letter, a formal contract to be prepared and signed to the foregoing effect, and the draft to be submitted to the defendants' solicitor for approval. Adams appended his signature to the letter assenting to its terms. The company was registered on May 2, but it appeared to have come to nothing, and the money subscribed by the few shareholders composing it was returned.

Evidence of the facts having been given on behalf of the plaintiff, the learned judge, in giving judgment for the defendants, said that it was clearly the intention of the parties that there should be a sale to the proposed company, and the agreements entered into were with a view to such a sale. The agreement of March 22, not being enforceable, did not entitle the plaintiff to recover the agreed commission. Nor under the circumstances could he recover on a *quantum meruit*. He had not shown that it was through any fault of the defendants that he had been prevented earning the commission, or that they had derived any benefit from his exertions.

Counsel for the plaintiff: Mr. T. E. Crispe and Mr. H. Smith; counsel for the defendants: Mr. H. J. Bonsey.

Tanner v. Green.

Queen's Bench Division, May 15, 1891.—Before Mr. Justice Hawkins.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 598.

Negotiations as to price—Vendor entitled to accept highest offer.

This was an action for commission on the sale of farms in South Africa for £20,000, £1,000 being the amount

of the claim. The plaintiff's particulars of claim were that, in a letter of September 23, 1889, he had offered to sell for the defendant farms in the Transvaal for a commission of 5 per cent., and that the defendant by a letter of September 25 authorised the plaintiff to sell seven farms containing 70,000 acres in Lydenburg for £20,000, and that the plaintiff having sold the land for that sum the defendant was liable for the commission. The plaintiff alleged that he had introduced one Pope to the defendant as a purchaser of the lands at that price, and that he became the purchaser at that price. In the alternative the plaintiff alleged that he introduced Pope to the defendant as a purchaser or a person ready to become a purchaser at the price stated, and that it was implied in the contract that the defendant should not unreasonably refuse to accept as a purchaser any person introduced by the plaintiff and ready to become a purchaser, but that he unreasonably refused to accept Pope as the purchaser, and so the commission was due. The defendant denied any agreement, and alleged that any agreement he entered into was conditional upon a sale being effected, and that no sale was effected to any person introduced by the plaintiff, and that any person introduced by the plaintiff thought the price asked too high, and was not in a position to complete the purchase at the price required.

The facts seemingly amounted to this : that Green had told Tanner that he had farms to sell in South Africa for £20,000, and the plaintiff's case rested on the fact that this offer was never withdrawn. The plaintiff had introduced Pope, who was willing to give £20,000, but the solicitors wrote to him that the seller would not accept less than £21,000, and Pope only offered £20,000 ; and meanwhile another person not introduced by the plaintiff offered £22,000, and the land was sold to him.

Mr. Justice Hawkins having taken time to consider his judgment, delivered it in favour of the defendant. The question, he said, was whether the plaintiff, who claimed the commission, had introduced the purchaser, and he thought he had not. On the contrary, the proposed purchaser he introduced had only offered £20,000, and the property was sold to another person for £22,000. The truth, in the opinion of the learned judge, was that the two parties were trying to get the property as cheaply as they could, and while Pope was hesitating, his offers

were used to enhance the price to the other party, and so Pope had lost the property and the plaintiff had not earned the commission. Judgment was therefore given for the defendant.

Counsel for the plaintiff: Mr. Willis, Q.C., and Mr. C. E. Jones; counsel for the defendant: Mr. Lockwood, Q.C., and Mr. L. Glyn.

Tucker v. Savage.

Queen's Bench Division, June 4, 1891.—Before Mr. Justice Wright

Reported *ESTATES GAZETTE*, Vol. xxxvii., p. 558.

Alternative claim—Commission or damages for being prevented from earning commission—Revocation of agreement.

This was an action brought by the plaintiff against an agricultural machinery manufacturer, of King's Lynn, to recover £400, either as commission for finding a purchaser for the defendant's business, or as damages for alleged breach of contract in preventing him (plaintiff) earning the commission. The plaintiff's case was that the defendant had agreed in writing that in consideration of his finding a purchaser for the defendant's business, including land, stock, buildings, patents, and goodwill, or a person who would form a limited company to purchase the concern at £40,000, payable half in cash and half in shares, he would pay him (plaintiff) 1 per cent. commission. The plaintiff alleged that he found a purchaser, but the negotiations came to an end owing to the defendant refusing to incur the expense of a valuation of the premises, etc. The plaintiff could not afford to incur the expense, which would have amounted to £300 or £400, out of his commission of 1 per cent. on the transaction.

The defendant admitted writing the letters relied on by the plaintiff, but denied that he promised to pay the plaintiff commission, unless a company was formed through the plaintiff's introduction, to take over the business. No such company had been formed, and the plaintiff had rendered no services to entitle him to any commission. The defendant further said that he gave the plaintiff notice in writing of the revocation of his appointment or authority, and that prior to the notice of revocation the plaintiff did not produce any person who was willing to purchase the business.

At the conclusion of the evidence, his Lordship said there was no proof that the defendant agreed to pay for the valuation, and he was therefore justified in revoking the contract. In the alternative he found that plaintiff had not proved damages. Therefore there would be judgment for the defendant, with costs.

Counsel for the plaintiff: Mr. McIntyre; counsel for the defendant: Mr. Lawson Walton, Q.C., and Mr. Hopkinson.

Re The Sovereign Life Assurance Company (Salter's Claim).

Chancery Division, June 23, 1891.—Before Mr. Justice Chitty.

Reported ESTATES GAZETTE, Vol. xxxvii., p. 626.

*Alternative claim—Commission or quantum meruit—Who is a
"ready and willing" lender?*

This was an application by Messrs. H. Salters and Sons, mortgage brokers, to rank as creditors in the winding-up of the above company for commission earned, or, in the alternative, for damages. It appeared that the company, by a letter of July 14, 1887, authorised the applicants to negotiate for them a large mortgage advance, and the letter continued, "If directly or indirectly through your negotiations or introduction the loan is procured, we agree to pay you a commission of $\frac{3}{4}$ per cent. on the amount." The applicants introduced mortgagees, but a petition for the winding-up of the company having been presented, the intending mortgagees refused to complete, and, although the consent of the Court was afterwards obtained by the provisional liquidator for proceeding with the negotiations, the transaction ultimately fell through. The applicants contended that they had done all that was required to be done on their part, and had performed all the services for which the commission was to be paid. The Official Liquidator contended that the commission was not payable, the transaction not having been completed.

Mr. Justice Chitty, having stated the facts and read the correspondence (which was voluminous), continued: It is clear that the applicants never procured from the intending mortgagees a contract or any binding obligation to make the loan. The latter, no doubt, on the procurement of the applicants did become and were ready

and willing to entertain the proposal for the loan, and they proceeded to negotiate on the subject, and were willing at one time to agree as to some of the more important terms, but the negotiations fell through before the terms were finally settled. It was, however, argued as to the meaning of the expression in the letter of July 14, "if the loan is procured," that, on the authority of "*Green v. Lucas*" and "*Fisher v. Drewitt*," the applicants had procured a person ready and willing to make the loan on the terms proposed. I, however, hold on the facts that the applicants did not even procure such a person. Obviously the procuring a person willing to negotiate about the matter is not sufficient. The readiness and willingness required must be a continued readiness and willingness to go on with the loan according to the usual course of business in such a transaction. Where the broker obtains a contract from his principal, the matter stands on a different footing. If the applicants in the present case had obtained a contract from the intending mortgagees to advance the money, and the matter had afterwards not been completed by reason of defects in the title of the company to the property, it may well be that the commission would have been earned. But if A employs B to procure a buyer for his horse at a price, and B gets C to go and look at the horse, and C for reasons, good or bad, or for no reason at all, although he negotiates, declines to buy, the commission is not earned. So, though he expresses his willingness, but in such a manner as not to bind himself, and afterwards declines to proceed, the commission is not earned. I will give another illustration of my meaning. If A employs B to procure a loan of £1,000 on his bond, and B finds C, who says that he is willing to make the advance if A will pay C's solicitor a fee for negotiating the loan, to which A does not agree, the commission is not earned. I hold, then, that if the case depended solely on the letter of July 14 the commission was not earned. His Lordship then considered further contentions of the applicants, and held them to be untenable, and continued: In regard to the claim for damages, the applicants cannot recover on a *quantum meruit*, inasmuch as the contract was entire, and the whole of the services agreed to be rendered were not rendered. Nor can they recover damages on the ground that the company by any act or default pre-

vented them from performing the services. There are no facts to justify such a claim. The company would have been only too glad to get the money, which might have saved them from the disaster of the winding-up order which was ultimately made. The commencement of the winding-up had not disabled the company from proceeding with the proposed loan. The judge gave his sanction to proceed with the negotiation, and the liquidator was desirous of obtaining the money. The appointment of the provisional liquidator, though it may have affected the powers of the directors, did not take away the powers of the company. It was competent for the liquidator to continue the negotiations, and, indeed, to perform the contract, if there had been any. When the intending mortgagees broke off the negotiations, there was every probability that the sanction of the Court required by section 153 of the Companies' Act, 1862, would be granted. Further, counsel for the applicants declined, and rightly declined, to contend that there was any implied contract on the part of the company that an adverse petition to wind up the company should not be presented against them. The result is that there was no default on the part of the company, and the claim for damages has failed.

Upon the applicants undertaking not to appeal, the learned judge dismissed the application without costs.

Counsel for the applicants: Mr. Fullarton, Q.C., and Mr. H. H. S. Cunynghame; counsel for the official liquidator: Mr. Whitehouse, Q.C., and Mr. Hull.

Coates v. Fry.

York Assizes, July 29, 1891.—Before Mr. Justice Day.

Reported ESTATES GAZETTE, Vol. xxxviii., p. 106.

*Original introducer—More than one commission may be payable—
What amounts to abandonment of negotiations?*

Mr. Christopher Coates, farmer, auctioneer and land agent, of Cleasby, was here suing Mr. Theodore Fry, M.P. for Darlington, for commission on the sale of land.

The plaintiff disposed that he had had an interview with Mr. Fry on December 26, 1882, at Cleasby. Mr. Fry asked him if he would see his cousin and try to get him to buy some land which adjoined his, and said he would give him the usual commission if he effected a

sale either with his cousin or anyone else. Plaintiff said he would try, and would write to his cousin. He wrote to his cousin that night, saying: I saw Mr. Fry this morning, who asked me if you would buy any of my farm to make yours a better lot. He says he would offer you either 55 acres or above 100. The 55 acres is the low and best part of my farm, which joins yours for more than half a mile. If ever you did think of residing here, it would be a grand piece to get hold of. If you would entertain the matter, drop me a line and I will send tracings of both lots. He received the following letter from Mr. Fry in his own handwriting:—"I enclose tracings of two pastures of your farm, which would greatly improve the piece your relative purchased. If he would like to entertain the idea of either, please let me know, and oblige. The pink piece is about 55 acres, the buff 60 acres, but they might require measurement." There was a tracing in the letter. He could not get the exact date of the letter, because some years ago he had torn a piece of it off to make a memorandum. He received the letter somewhere about three months after the interview. He had frequent interviews with Mr. Christopher North Coates about the purchase of the land, and also with Mr. Fry, and he did his best to get Mr. C. N. Coates to buy the piece. He got him to make an offer, and saw Mr. Fry, who would not accept the offer. Mr. Fry wanted something like a thousand pounds more than the offer. He told his cousin he ought to give more, and he afterwards learned from Mr. Coates that he ultimately purchased the property for £3,000 in May, 1889. From the time first mentioned until Mr. Coates purchased, he was doing his best to promote the sale. No amount of commission was mentioned—only the "usual" commission. One per cent. was a reasonable commission. In cross-examination the plaintiff stated that he had had several interviews with Mr. Fry during the negotiations. In the 12 months after receiving the letter, by letter and seeing him, he supposed he communicated with Mr. Fry half a dozen times. He did not keep copies of the letters. He told Mr. Fry that his cousin would buy, but would not give the price asked. He was willing to give £2,500. He did not report him as being ready to give more, but he told Mr. Fry that if he would reduce the price he could get his cousin to give more than he

offered. He could not sell at Mr. Fry's price. After the expiration of 12 months he left him to do his own work, merely recommending his cousin to buy, and saying he ought to give more than £2,500. Mr. C. N. Coates did ultimately buy the land.

Mr. C. N. Coates was then called, and said he would not have known the property was for sale but for his cousin. The sale was ultimately negotiated by Mr. Hutchinson, with whom he was in negotiation for a year, he should think. When they started the negotiation Mr. Hutchinson asked, on behalf of Mr. Fry, £4,000. He said he would give £2,500, and ultimately he gave £3,500, through the negotiations with Mr. Hutchinson, Mr. Fry's solicitor.

The defence was that Mr. Hutchinson was acting as Mr. Fry's agent, and could claim commission. It was urged that the sale had not been effected by the plaintiff, and that the point for the jury was that nothing had been done by plaintiff's agency for so long that Mr. Fry put the matter in the hands of his solicitors to negotiate. The result of plaintiff's conduct was that they had drawn the reasonable inference that he had abandoned the negotiation. Having paid one commission, Mr. Fry was naturally loth to pay another.

The Judge said that, as a rule, if a person employed an agent to conduct a sale he was liable, but he might take it out of his hands and not pay if the agent did nothing during years after, or the matter might be considered to be dropped, particularly if they afterwards got hold of some new person. But plaintiff never dropped it altogether, but communicated from time to time with Mr. Fry or his cousin, who ultimately bought, although he did so after negotiating with Mr. Hutchinson, who, as solicitor for the defendant, might negotiate the thing upon the introduction of the plaintiff.

Mr. Theo. Fry, M.P., was then called, and said he was defendant in the action and M.P. for Darlington. He had heard plaintiff's evidence. He did not think any name was mentioned by plaintiff when he first spoke of the sale of the land. He said that if plaintiff could effect a sale he was willing to give the usual commission. After that he never had any letter from him on the subject. On one or two occasions about the same time plaintiff spoke to him on the question, and did then mention his cousin's name as a possible

purchaser. He accepted what plaintiff stated as to no interview taking place on the subject one year after the date of the conversation. He never heard anything from him about the place after one year from the date of the promise. He had sold the property, and Mr. Hutchinson negotiated the sale. He instructed him to take the sale in hand. Mr. Hutchinson came to him about it six months before the purchase, and he became liable for the commission to Mr. Hutchinson. He did not want to pay two commissions. He had no idea that at the time Mr. Hutchinson was negotiating the sale plaintiff was working for him. He had considered for many years that the whole thing was off, or he would have asked Mr. C. N. Coates what he was doing in the matter. Plaintiff never made any application for commission until after the execution.

Mr. Fry was subjected to a long cross-examination, and then Mr. Edward Hutchinson, of the firm of Hutchinson, Lucas and Meek, solicitors, gave evidence to the effect that he ultimately negotiated the sale of the property to Mr. C. N. Coates. He had sold some land previously for Mr. Fry, part of the same estate, and he knew Mr. Fry was anxious to get rid of the Cleasby Estate. Mr. C. N. Coates, the owner of the adjoining property, struck him as a probable purchaser, and he knew he was a man of considerable means. He met him frequently in the market, and he asked him if he would buy. He had no previous negotiations. They had included the commission in the bill of costs not sent in yet.

The Judge said it did not matter whether defendant had already paid one commission or not if plaintiff was entitled to recover. The question was whether the purchase which eventually took place was brought about through the intervention or agency of the plaintiff.

For the defendant it was then contended that plaintiff had done nothing for six years, and his counsel asked the jury if it could be stated that the property was ultimately sold through his instrumentality merely because he had once or twice mentioned to his cousin the fact that the land was for sale. Clearly the sale was ultimately effected through the instrumentality of Mr. Hutchinson, who started the game on his own account. Mr. Hutchinson's firm had lodged a claim for commission, and it would be hard if Mr. Fry, having to

pay a man who effected the sale, had to pay commission to somebody else who did not.

The learned Judge, after hearing the plaintiff's counsel in reply, said the only question for the jury to determine was whether plaintiff was entitled to commission upon the sale of that property, and he thought they would have no doubt one way or the other as to whether the sale was brought about through the intervention of plaintiff. The law on the subject was that a man was only entitled to commission when he was the person who really brought about the transaction.

The jury found a verdict for the plaintiff, and judgment was entered in his favour for £30.

Counsel for the plaintiff: Mr. Walton, Q.C., and Mr. Luck; counsel for the defendant: Mr. E. Tindal Atkinson, Q.C., and Mr. Bankes.

Pritchard v. Reynolds.

Conway County Court, October 1, 1891.—Before his Honour Sir Horatio Lloyd.

Reported ESTATES GAZETTE, Vol. xxxviii., p. 348.

Where no special agreement auctioneer entitled to commission whether property sold before, at, or subsequent to the auction—Custom.

Mr. John Pritchard, auctioneer, of Bangor, here sued Messrs. Reynolds, solicitors, Liverpool, for £26 16s. 4d., being commission and disbursements in connection with the sale of the Bryngynog Estate, Llansantffraid.

It appeared that the property was sold by private treaty on the eve of the date of the auction sale for £2,500, and for the plaintiff evidence was called to show that the custom was that unless there was a special agreement, the auctioneer was entitled to commission, whether the property was sold before, at, or subsequent to the auction, the auctioneer, in the latter event, considering that the property remained at his disposition unless he was otherwise notified. The commission charged was 1 per cent.

For the defence it was said the agreement was that commission was only to be charged in the event of a sale by auction, but his Honour gave judgment for plaintiff, less £1 7s. 4d. paid into Court.

Langburn v. Robinson.

Middlesbrough County Court, October 19, 1891.—Before his Honour Judge Turner.

Reported *ESTATES GAZETTE*, Vol. xxxviii., p. 393.

Original introducer entitled to commission, although there may have been a lapse of time.

The defendant was sued for £50 commission on the sale of the Queen Hotel, at South Bank, Middlesbrough, the plaintiff claiming as assignee of Messrs. Duncan (architect) and Jeff (auctioneer).

The evidence on behalf of the plaintiff showed that defendant was formerly owner of the Queen Hotel. In January, 1890, he had written to Duncan stating that if he could find him a purchaser for the house within 28 days, anything he got above £5,000 he could have for himself. Duncan had a conversation with Jeff, and they entered into negotiation with several parties, but failed to effect a sale. Subsequently they had an interview with the defendant, who said he would allow them the usual commission if they sold the hotel. Afterwards they found out that defendant had sold the hotel to Mr. Prest, with whom they had been in communication, and Mr. Barron submitted that it was through the agency of Messrs. Duncan and Jeff that the house was sold for £5,200. The latter assigned their claim of £50 commission to Langburn for £12, and it was as assignee that the plaintiff now claimed the amount.

For the defence it was submitted it had not been proved that Mr. Prest purchased the house through the intervention of Duncan and Jeff in order to entitle them to commission. Jeff, although he declared he was not Prest's agent in this matter, admitted that Prest promised to pay him £10 if he purchased the place, and he paid him 30s. He was therefore the purchaser's agent, whilst Duncan having failed to find a purchaser according to the terms of the defendant's letter, could not claim any commission. The defendant was called in support of his case.

His Honour said that it had been held that when an original negotiation was begun by an agent, no matter if a sale was not effected for several months after, and then effected by the owner and not the agent, the latter, as the original negotiator, was entitled to his

commission on the sale. After full consideration he must find for the plaintiff for the full amount claimed with costs.

Mr. T. M. Barron appeared for the plaintiff, and Mr. G. E. Barnley for the defendant.

Kingwell and Co. v. Garden.

Westminster County Court, October 23, 1891.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxviii., p. 420.

There must be a binding agreement between the parties before the agent can recover commission.

In this case Messrs. Kingwell and Co., house agents, sought to recover £57 3s. 6d., commission for the introduction of a tenant for the defendant's premises, 200, Piccadilly.

The plaintiffs had introduced a Mr. Anderson, who agreed to purchase the lease and fixtures on terms arranged between all the parties. The matter was then placed with the solicitors to the defendant, for the execution of the necessary documents. In the meantime the defendant's solicitors required that a sum of £60 in respect of the fixtures should be paid by the intending tenant, and that he should execute a binding contract on the agreed terms. Mr. Anderson was, it was argued, perfectly willing and prepared to do so, but before he had time to act the defendant's solicitors wrote him that, as he had not complied with the terms of their letter, he must consider the bargain at an end. The plaintiffs' case was that they had found a responsible tenant, who was anxious and willing to complete, and inasmuch as the matter fell through owing to the conduct of the defendant, they were entitled to commission.

Mr. Anderson gave evidence in corroboration of the plaintiffs' case. He made an offer of £600, which, however, was subsequently refused, although he was always willing to execute a binding agreement.

For the defence it was submitted that it was clear the plaintiffs had not established any title to this commission, and therefore ought to be non-suited.

The learned Judge, in so holding, said that an agent was not entitled to commission until he had succeeded in getting a binding agreement between the parties. In

this case there was no such agreement. Judgment was accordingly only given for £4 which had been paid into Court by the defendant as out of pocket expenses.

Mr. Lynden Bell was counsel for the plaintiffs, and Mr. Pollard appeared for the defendant.

Melhuish and Co. v. Horncastle and Pember.

Bloomsbury County Court, November 17, 1891.—Before his Honour Judge Bacon and a Jury.

Reported ESTATES GAZETTE, Vol. xxxviii., p. 514.

Agreement to divide commission—Custom.

In this action Messrs. Frederick H. Me'huish and Co. sued Messrs. Horncastle and Pember to recover half the commission received by the defendants on the sale of a house situated in New Bond Street.

Mr. Melhuish gave evidence to the effect that a lady named Barker, who was a client of his, applied to him in April last to find her a house. He made inquiries with regard to the house in New Bond Street and found that it was in the market, and sent Mrs. Barker particulars. He wrote to the solicitors for the vendor inquiring whether he might introduce a purchaser, and the solicitors referred him to the defendants in this action as the vendor's agents. The witness accordingly wrote to the defendants and asked whether their client might look over the premises at a certain time, and wound up his letter with the remark, "I assume that you will be agreeable to divide commission." Later in the day a boy from the defendants' office called and stated that it was all right, and the appointment mentioned would suit. Accordingly witness wrote his client to attend at the premises, which she did, meeting a member of the defendants' firm there, and ultimately purchasing the premises for £1,200. Mr. Melhuish stated that he had had considerable experience in the transfer of property, and alleged that a custom existed in the estate agency business that on agents introducing a purchaser to the vendor's representative the commission payable to the vendor's agents was divided between both parties, unless a special arrangement was made.

Mrs. Barker gave evidence in support of the plaintiffs' case. She corroborated Mr. Melhuish as to his introducing this property to her, and said that when

she attended at the premises she met a member of defendants' firm, who told her in answer to her inquiries that he came at plaintiffs' request, and produced a letter from Mr. Me huish. Mrs. Barker added that it was entirely through the plaintiffs that the house became known to her, and that she asked the defendants whether she had better not communicate any decision she might arrive at to the plaintiffs, but the defendants asked her to communicate with them direct.

Mr. Physick (of the firm of Messrs. Physick and Lowe, auctioneers and estate agents) gave evidence as to the custom of dividing commission.

For the defence, Mr. Finch and Mr. Pember, the principals, and a number of their clerks gave evidence. The defence was that no agreement had been arrived at to divide commission, and that there was no custom to that effect. The defendants could not remember who had opened the letter of Mr. Melhuish in which he asked for half commission, or who attended to the business in April. The defendants also called estate agents to disprove the alleged custom, but in cross-examination these gentlemen admitted that if they had done the work the plaintiffs did, they would have expected to be paid for it.

After the Judge had summed up, the jury retired to consider their verdict, and ultimately found that Mrs. Barker had been introduced to the defendants by the plaintiffs; and that there was an arrangement between the parties to divide commission. As to the custom they could not agree.

On this finding judgment was given for the plaintiffs for £24, one-half of the net commission received by the defendants, with costs.

Counsel for the plaintiffs: Mr. G. S. Bowen;
counsel for the defendants: Mr. G. Ellis.

Davis v. Mona Hotel (Limited).

Queen's Bench Division, February 1, 1892.—Before Mr. Justice Day and a Common Jury.

Reported *ESTATES GAZETTE*, Vol. xxxix., p. 123.

Commission recoverable when a purchaser has been introduced and has entered into a binding contract—Implied assent by shareholders of a company—Custom.

This was a claim for £650 as commission on the sale of the Mona Hotel, Covent Garden. The commission note, dated January 9, 1891, on which the plaintiff sued,

170 COMPENDIUM OF COMMISSION CASES.

was in the following terms:—" *Re Mona Hotel, Limited.*—We, the directors of the above company, are willing to sell for the sum of £15,000 the goodwill, the lease, license and furniture, fixtures, etc., and stock at valuation of the above hotel, and we agree to allow you a commission of 5 per cent. or on any amount which we might agree to take from any purchaser you introduce. Such sale is subject to the approval of the shareholders." This note was signed by three directors of the company. The plaintiff found a Mr. Page, who entered into a contract to purchase the hotel at the price of £13,000, and paid a deposit of £1,000. The plaintiff's claim was for commission on the £13,000 at the agreed rate. The sale was not carried out, Mr. Page refusing to complete. The defence to the claim was that the sale never received the approval of the shareholders, and that by the custom of the trade no commission was payable until the completion of the purchase and receipt of the purchase money.

It was contended for the plaintiff that he was entitled to recover, since he had introduced a purchaser who had been accepted by the defendants, and had entered into a binding contract. It was admitted that the shareholders of the company had not given any express assent to the sale, but counsel relied on the fact that the company had received and kept the £1,000, and had brought an action against Page for specific performance of the contract.

For the defendants it was argued that there had been no assent within the meaning of the contract, no meeting of the shareholders having been held. Evidence as to the existence of the above-mentioned custom was called, but failed to establish it.

Mr. Justice Day having summed up the facts to the jury, a verdict was found for the plaintiff, and judgment was given accordingly.

Counsel for the plaintiff: Mr. Blake Odgers; counsel for the defendants: Mr. Ashton Cross.

Beningfield v. Lady Brooke.

Queen's Bench Division. March, 1892.—Before Mr. Justice Day.
Reported *ESTATES GAZETTE*, Vol. xxxix., p. 219.

Tenants not obtained by agents suing.

Lady Brooke, sued as Frances Evelyn Brooke, the wife of Francis Richard Guy Neville, commonly known as

Lord Brooke, was sued in respect of her separate estate by Messrs. Benningfield and Son, land agents and valuers, who were employed to obtain tenants for Lady Brooke for her farms on her Dunmow Estate, in Essex. They were to be paid the usual commission for any person they should introduce as tenants. Three farmers were alleged by the plaintiffs to have taken farms on their introduction, and they made valuations, for which, together with the commission, they claimed two sums of £15 8s. and £16 10s. Besides this the plaintiffs claimed £50 damages for breach of contract, as the defendant did not employ the plaintiffs to make a valuation in respect of other farms.

The defence was that the tenants of the farms in question dealt directly with Mr. Webb, Lady Brooke's agent, and not with the plaintiffs, and that they were not entitled to any commission, and his Lordship being of opinion that the plaintiffs had not made out their claim, gave judgment for the defendant.

Giddy and Giddy v. Ross.

Queen's Bench Division. March 4, 1892.—Before Mr. Justice Vaughan Williams and a Common Jury.

Reported ESTATES GAZETTE, Vol. xxxix., p. 245.

*Commission alleged to be due on letting and on subsequent sale—
Clause in agent's form—Identification of property.*

In this action the plaintiffs sued Lady Ross to recover £187 commission upon the sale of a property belonging to her called Oak Cottage, Windsor, which sale they alleged was effected through their introduction. The defendant denied her liability, alleging that the property in question was sold through the agency of Mr. Perks, of Dover Street, to whom she had paid full commission, and not through the plaintiffs.

For the plaintiffs it was said that in December, 1888, the defendant had been anxious to let a property of hers at Windsor, called Oak Cottage, and had placed that property in the plaintiffs' hands with the object of letting it if they could, or selling it. It appeared that the plaintiffs sent the defendant one of their forms on which to fill up the particulars of the property, which Lady Ross instructed her sister, Miss Barnes, to do. This form was filled up by Miss Barnes on December 19, 1888, and was returned to the plaintiffs signed

172 COMPENDIUM OF COMMISSION CASES.

"Lady Ross." It contained the plaintiffs' terms of commission, with the following clause at the end thereof:—"Note.—Should a tenant eventually purchase, the commission on sale will be charged, less the amount previously received on the letting." Shortly after the plaintiffs advertised this property as to let, and in January, 1890, introduced a Mrs. Hamilton, who entered into negotiations for taking it on lease. These negotiations culminated in an agreement dated April 24, 1890, by which Mrs. Hamilton agreed to take Oak Cottage, together with about two acres of the land, on a lease of seven, 14 and 21 years at a yearly rent of £330, Lady Ross undertaking to build stables at a maximum cost of £900, upon the cost of which Mrs. Hamilton agreed to pay as soon as finished an increased rental of 6 per cent. on their cost. Towards the end of the negotiations with the plaintiffs a question arose as to the exact boundary of the portion to be let to Mrs. Hamilton, and Lady Ross being at the time in Scotland, referred the plaintiffs to Mr. Perks, stating he had some plans of the property and the proposed boundary. Mrs. Hamilton's agents, Messrs. Waller and Co., were in consequence referred to Mr. Perks, with the result that on July 1, 1890, Mrs. Hamilton (who had then become Mrs. Grenfell) purchased the whole of the property, nearly four acres, for £9,000. Messrs. Giddy and Giddy, on hearing of the sale, claimed that they were, under the terms of their original agreement with Lady Ross, entitled to their full commission upon the sale. Lady Ross, on the other hand, while admitting that she was liable to pay the commission on the letting, alleged that she was in no way bound to pay the plaintiffs any commission on the sale of the property as a whole to Mrs. Grenfell on July 1, 1890. She said that she never gave any instructions whatever to the plaintiffs authorising them to more than let Oak Cottage and one or two acres—just the grounds round the house. She alleged that the property in question had been sold through the agency of Mr. Perks, and not the plaintiffs. As to the question as to whether she instructed Miss Barnes to sign the plaintiffs' particulars of terms, etc., she said she gave her no special directions, but told her to fill them up and send them on to plaintiffs. She never noticed the clause containing the terms upon which the plaintiffs now relied, and had never before known of

such a clause. Defendant further alleged that the property sold was not identically the same as that which plaintiffs were instructed to let. The plaintiffs relied on their verbal instructions to sell, but preferably to let, and that the instructions to sel. were corroborated by a letter from Lady Ross, dated April 10, 1890, as follows:—"Lady Ross sends you the plan of Oak Cottage. The grounds extend to where the black line is made, but if you do not quite understand will you apply to Mr. Perks, Dover Street? Lady Ross thinks £300 is not too large a rent, as it is all done in the best style. Her ladyship would prefer to sell for £8,000"; and that if it should be held that these instructions did not entitle them to commission, then they were entitled under the note on the terms as before stated, they having introduced a tenant who purchased.

At the close of the case the learned Judge left these questions to the jury, viz.:—(1) Was the property in question sold through the introduction of the plaintiffs? (2) Were the plaintiffs instructed to sell? (3) Was the property mentioned in the defendant's instructions to the plaintiffs substantially the same property as that which was sold?

The jury answered the first question in favour of the plaintiffs, and the other two in favour of the defendant, upon which the learned judge gave judgment for the defendant, and his decision was afterwards affirmed on appeal, and a new trial refused.

Counsel for the plaintiffs: Mr. Morton and Mr. Gore Brown; counsel for the defendant: Mr. Jelf, Q.C., and Mr. Gore.

Davy v. Thompson, Rippon and Co.

Torquay County Court, March 5, 1892.—Before his Honour Judge Edge.

Reported ESTATES GAZETTE, Vol. ~~xxxix~~, p. 243.

Agreement between auctioneers to divide commission—"Gross" or "net" commission.

In this case Mr. A. J. Davy, auctioneer, of Torquay, sued Messrs. Thompson, Rippon and Co., auctioneers and estate agents, Exeter, for £50, balance of commission due in respect of the sale of the Royal Hotel, Torquay.

174 COMPENDIUM OF COMMISSION CASES.

It appeared that in May, 1891, the owners of the Royal Hotel wished to sell the property. Defendants had previously offered the property by private treaty and by auction, but did not succeed in obtaining a purchaser. On May 5 plaintiff wrote to defendants to state what was the reserve price, and asking if defendants would divide the commission in the event of his persuading a friend to purchase. Defendants replied that the price asked for the freehold was £13,000, that they had previously been offered £12,500, that if £12,000 were then offered they would do their best to get it accepted, and they would divide the commission. Plaintiff found a purchaser in Mr. J. F. Rockhey, of Torquay, whom he took to Exeter, where terms were arranged, the contract was signed for £12,300, and the deposit was paid. On September 15 a letter was written by defendants, enclosing a cheque for £70 as part commission for the introduction of Mr. Rockhey, and stating they hoped plaintiff would consider they had treated him liberally, as they had the property in hand for a considerable time, and had been put to considerable expense. Mr. Davy thought it would be more satisfactory if he knew exactly what the defendants had received for commission, as there had been an agreement to divide, but eventually defendants replied repudiating further liability. Plaintiff did not know precisely what commission was received by defendants, but had reason to think that the amount received was £300. That left £80 due to plaintiff, but that amount could not be claimed in a county court except by plaintiff abandoning all but £50. The defendants had delivered a statement of account showing that after dividing the commission, amounting to £70 to each, and paying expenses incidental to the sales back to 1889, there was a balance of 1s. 7d.

His Honour said it appeared that the only question was as to the meaning of two letters in the first instance, whether "commission" meant gross or net commission, and whether it meant that out of the gross commission these deductions had to be made or not. The plaintiff was entitled to particulars of the disbursements.

For the defence it was contended that though the letters contained a general agreement to share commission, the agreement to share the commission in this particular sale was made verbally.

His Honour, however, held that the contract was plain enough. It was, "If you will induce your friends to purchase this property we shall get a commission which we will divide." He believed Mr. Davy entered into the contract on the strength and faith of those letters, and he gave judgment for the plaintiff.

Mr. Cowdell appeared for the plaintiff, and Mr. Harris for the defendants.

Robbins v. Lewer and another.

Queen's Bench Division, March 16, 1892.—Before Mr. Justice Denman and a Common Jury.

Reported ESTATES GAZETTE, Vol. xxxix., p. 268.

Original Introducer—Agreement for reasonable remuneration.

This was an action against a Mrs. Lewer and her son under unusual circumstances for commission on the sale of some property belonging to her.

The plaintiff had been asked by the son to try and find a purchaser, and had certainly introduced a Mr. Ray, who ultimately became the purchaser of the property for £4,900, on which the plaintiff claimed £122 19s. for commission at the rate of 2½ per cent. on the purchase money. In point of fact, however, nothing passed between Mrs. Lewer and Ray in consequence of that introduction, and he ultimately became purchaser through Mr. Beale, a house and estate agent, who claimed commission, and was paid £100. The plaintiff also claimed commission as having originally introduced the purchaser, and sued both the mother and the son in the action. The son let judgment go by default; the plaintiff claimed summary judgment against the mother, but she was allowed to defend on bringing £50 into Court, but she pleaded that £25 would be enough to remunerate the plaintiff under the circumstances, which she now stated in evidence.

The learned Judge, who said it was a curious case, left the question to the jury whether the plaintiff had agreed for reasonable remuneration and what it should be, and they found for the plaintiff for £35.

Counsel for the plaintiff: Mr. Winch, Q.C., and Mr. W. P. Horton; counsel for the defendants: Mr. Cunningham.

Pierce v. Aldridge.

Croydon County Court, May 10, 1892.—Before his Honour Judge Lushington.

Reported ESTATES GAZETTE, Vol. xxxix., p. 493.

Auctioneer's claim to commission where property put in his hands, but sold by the vendor before the auction—Custom must be strictly proved.

This was an action to recover the balance of a sum of £70, alleged to have been received by the defendant, an auctioneer, of Upper Norwood, on behalf of the plaintiff, who was trustee of the estate of a Mrs. Drew.

Mr. Aldridge, it appeared, had received instructions from Mr. Pierce, acting as trustee to the estate of Mrs. Drew, to sell certain property in or about Upper Norwood. Eventually they sold some ground rents to Mrs. Brand, who paid the deposit of £70. Subsequently the defendant said the only way of satisfactorily disposing of the estate was by public auction, and eventually he was instructed to put it up for sale. He had given plaintiff credit for £70. The only matter in dispute was whether defendant was entitled to £27 10s. commission on the sale of property to Mr. Smith, and £2 0s. 6d. for extra expenses. The custom referred to was that when a property was put into the hands of an auctioneer to sell by auction, and advertised by him, if the property was then sold by the vendor before the auction, the auctioneer was nevertheless entitled to his commission. The contention on the other side was, first, that the property was sold through a firm of auctioneers, Messrs. Westmore and Young, who were given the property for sale in June, 1891; secondly, that there was no such custom as that stated; and, thirdly, that defendant had been paid £10 10s. for putting the property up to auction.

Mr. Aldridge said that he had received instructions concerning this property from the clerk to the firm, and later from Mr. Pierce himself. He advertised it, and subsequently he called on Mr. Smith, and advised him to purchase. He told him he was going to submit it to auction, and gave him the date. The custom was that if a person went to an auctioneer to sell property by auction that firm was entitled to receive a commission if the property was sold by the vendor, or by his instructions, between the date of the appearance of the advertisement and the announced auction. On

this ground he claimed £27 10s., his usual percentage—viz., 5 per cent. on the first hundred and $2\frac{1}{2}$ per cent. on the remainder. The £2 0s. 6d. was for extra expenses, as he had had to make a number of journeys about the matter.

In cross-examination Mr. Aldridge was asked whether the custom he referred to depended on the purchaser having seen the advertisement? and replied, "Not entirely. If we receive instructions to submit a property to auction, and have taken steps in the matter, then we are entitled to our commission." He could give no specific instance of the custom.

Mr. J. P. Dickins, auctioneer, said it was a recognised custom that where an auctioneer was instructed to submit a certain property to auction for the time being he was considered the sole agent. After having taken steps to carry out his instructions, if the property was sold by private treaty by the vendor, or other person before, or in consequence of such auction, the auctioneer was entitled to his commission.

In contradiction of this evidence Mr. Frederick Herbert Westmore, who said he had been an estate agent for three years, previous to which he was ten years as clerk in an auctioneer's office, stated he had never heard of such a custom as that referred to, or anything like it. It was a matter of contract, not of custom.

In the result his Honour said he did not think the custom had been proved. He would take the £10 10s. as an estimate of the out-of-pocket expenses, and gave judgment for the plaintiff for £34 10s.

Counsel for the plaintiff: Mr. Tell; counsel for the defendant: Mr. Colam.

Jackson v. Bucks Direct Supply Company.

Westminster County Court, June 10, 1892.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xxxix., p. 594.

Retainer disputed—No services really rendered by plaintiff.

The plaintiff in this case, an auctioneer, valuer, and business and transfer agent, sought to recover from the defendants £37 10s., for commission on the sale of the defendants' business, situate at 108, Brompton Road, to Viscount Hampden.

The plaintiff's contention was that he was instructed by the defendants to sell the business, and that it was

178 COMPENDIUM OF COMMISSION CASES.

through his introduction that the business was sold to Lord Hampden. It was urged on his behalf that if the relation of buyer and seller is brought about by the action of an agent, however slight the service rendered, he is entitled to commission, though the sale may not have been carried through by him. For the defendants it was alleged that the purchaser had not been introduced by the plaintiff, and that no service whatever had been rendered.

Mr. A. C. Rogers, the defendant company's managing director, stated that he advertised the business for sale, and among other replies received a printed circular from the plaintiff, asking to be allowed to sell the business, and enclosing a printed form for particulars of the business to be filled in, and that at a subsequent interview with the plaintiff he agreed to give him a commission of £50 if he succeeded in finding a purchaser, and that plaintiff subsequently disposed of the business to a person named Ogle, from whom he received a deposit of £50, which exactly covered his commission. Ogle having failed to meet the bills which he gave in payment of the purchase money, and also a subsequent bill of £100 given as consideration for releasing him from his contract, he (Mr. Rogers) himself sold the business to Lord Hampden's representative, and no service whatever had been rendered by the plaintiff in connection with the sale.

Mr. A. Hunt, Lord Hampden's manager, gave corroborative evidence, and his Honour, in giving judgment for the defendants with costs, said he found as a fact—first, that defendants had never instructed plaintiff; and, secondly, that plaintiff did nothing whatever in connection with effecting the sale of the business.

Mr. Bankes appeared for the plaintiff, and Mr. Prior for the defendant.

Everill v. Walker.

Worcester Assizes, August 2, 1892.—Before Mr. Justice Cave.

Reported ESTATES GAZETTE, Vol. xl., p. 102.

First introducer—Ultimate purchaser seeing advertisement and attending at auction.

In this action Mr. Frank Everill, of Worcester, sued the Rev. W. Walker for work done and commission, and for money paid on behalf of the defendant.

The amount in dispute was £70, which the plaintiff claimed as commission on the sale of a valuable property known as Connellan, Malvern. The plaintiff, on the defendant's instructions, in January, 1890, advertised the property for sale, and it was offered by public auction, but did not reach the reserve price, and accordingly it was withdrawn. The defendant then instructed the plaintiff to sell the property by private treaty; leaving the matter entirely in Mr. Everill's hands as sole agent, and arranging for him to pay periodical visits to look after the property. Father Bulbeck, representing the Order of Benedictines, attended the auction through seeing the advertisements of the plaintiff, and finally the property was sold for £7,000 to the Benedictines for the purposes of a college or monastery, the sale being concluded between the parties without the intervention of the plaintiff. Mr. Everill claimed that the property was disposed of through his introduction, and he charged the usual commission of 1 per cent. on the purchase money.

On behalf of the defendant it was sought to show that Father Bulbeck was aware of the intended sale before the property was offered by auction, and that he introduced the Benedictine authorities to his friend, the defendant, and that the sale was concluded without any assistance from the plaintiff.

It was submitted that the plaintiff had nothing to do with the sale which was effected, and that the defendant ought to be relieved from the payment of commission to him.

Mr. Justice Cave found for the plaintiff for the full amount claimed, with costs.

Counsel for the plaintiff: Mr. Bosanquet, Q.C., and Mr. Ram; counsel for the defendant: Mr. R. H. Amplett and Mr. Quarrel.

Goldberg v. Westlake.

Glamorgan Assizes, August 8, 1892.—Before Mr. Justice Mathew.

Reported *ESTATES GAZETTE*, Vol. xl., p. 128.

Transaction effectually carried out—Damages but not full commission recovered.

In this action the plaintiff, Mr. Hyam Goldberg, ship-owner and commission agent, claimed £500 commission from a merchant at Swansea, for the sale of a patent fuel works.

180 COMPENDIUM OF COMMISSION CASES.

It appeared that in the early part of 1891 the defendant, who was a manager of, and a large shareholder in, the Pacific Patent Fuel Works, was desirous of selling the works, and in March of the same year the plaintiff, at the request of the defendant, procured the Atlantic Patent Fuel Company, Limited, Swansea, as a purchaser. Defendant then agreed, on March 6, to pay £500 to the plaintiff as a reward for his services, but defendant had not paid him any part of that amount, and refused to do so. The defence was that defendant had not requested the plaintiff to procure the Atlantic Fuel Company as a purchaser of his works. The question of selling the works had often been debated between the parties, but no terms were arranged as suggested by the plaintiff.

After hearing the evidence Mr. Justice Mathew summed up at length. In the course of his remarks he observed that the plaintiff sought to recover a large sum of money as commission in two ways. In the first place the plaintiff said that he was employed to render certain services by defendant, who promised to pay him £500 as a reward. Having rendered such services he said he was entitled to that amount. In the second place, he said defendant undertook to pay him £500 in a certain event, but that he (defendant) prevented it taking place. The case would be best illustrated by the following: Supposing a man wanted to sell freehold property for £3,000, and promised £100 commission to an agent for selling it. The agent found a purchaser, but the owner then said he had changed his mind. The agent claimed his commission, but the owner replied that he promised to pay it if the property was sold, and that he was not liable. "Oh," says the agent, "that is all very fine, but it is not the law." No, it was not the law, and the agent would be entitled to say that it was not his fault if the property was not disposed of, and that he understood the owner, as a man of reason and a business man, would not prevent him having his commission. That was the law, and the jury would be right in giving him the stipulated commission. In another case a man wanted to sell freehold property, with a quantity of plant, furniture, or stock, and promised to pay £150 to an agent if he found a purchaser; the agent also to make the valuation. The purchaser was found, but no valuation made, and then the owner said that he had changed his mind,

and would not sell. In this case the jury would be entitled to take a certain amount off the commission in consideration of the work the agent did not do, and to give him, say, £100. The plaintiff in this case said he had effectively negotiated, and found the Atlantic Company as a purchaser, and that, after the defendant had decided not to sell, he was entitled to the stipulated commission, or that amount with deductions the defendant might wish to make. The one important consideration for the jury was whether this transaction between the Atlantic Company and Westlake was finally settled and an agreement effected. What was supposed to be done was to amalgamate the two works, Westlake's property to be held in shares in the Atlantic Works. His lordship pointed out that the defendant said there was not a scrap of paper to show an agreement was effected, and that not a single director was called to prove the existence of such agreement, and that there was no formal record in the minutes of the company of it.

The jury found for the plaintiff for £50.

Counsel for the plaintiff: Mr. Bowen Rowlands, Q.C., and Mr. V. Meager; counsel for the defendant: Mr. Abel Thomas, Q.C., and Mr. Benson.

Brodie and others v. Williams.

Lord Mayor's Court, October 14, 1892.—Before Sir Forrest Fulton and a Jury.

Reported *ESTATES GAZETTE*, Vol. xl., p. 329.

Chain of agency complete—Commission recoverable.

This action was brought by Messrs. Brodie, Timbs and Baker, auctioneers, estate agents, and surveyors, against Mr. Edward Williams, to recover £46 5s., commission at the rate of $2\frac{1}{2}$ per cent. on £1,850, the amount realised by the sale of a house, the property of the defendant, through the alleged introduction of a purchaser by the plaintiffs.

The defendant was the owner of house property at Hampstead, including a house named Deanhurst, in Arkwright Road. This property was, it was alleged, managed for the defendant by a Mr. Stokes. Hearing, in April last, that the then tenant of Deanhurst, a Mr. Theobald, had died, Mr. Baker, a member of the plaintiff firm, asked Mr. Stokes whether his firm could

182 COMPENDIUM OF COMMISSION CASES.

act as agents for letting or selling the house. Permission was given, and particulars furnished to the plaintiffs in due course. These were that the house would be vacant on September 29; the ground rent was £20, the rent £130, and the price £2,200. The plaintiffs entered into negotiations with a Mr. Lowenthal, who ultimately purchased the house for £1,850. Mr. Lowenthal's name, however, was first introduced to the defendant by a Mr. Warburg, although the plaintiffs' case was that Warburg first heard of the house from them, and that, therefore, they were entitled to their commission on the transaction.

The defence was a denial of the alleged instructions by Mr. Stokes, who, it was said, had only authority to act for the defendant in the capacity of architect. It was also contended that the purchaser was introduced by Mr. Warburg, and that the plaintiffs were in no way instrumental in effecting the sale. Mr. Stokes stated in evidence that he told the plaintiffs' representative that he would place any offer he liked to make for the house before Mr. Williams, but he distinctly told him he could give him no instructions.

The jury found for the plaintiffs for the amount claimed.

Counsel for the plaintiffs: Mr. C. C. Scott; counsel for the defendant: Mr. Stephen Lynch.

Liell v. Boulter.

Bow County Court, October 14, 1892.—Before his Honour Judge Lumley Smith and a Jury.

Reported ESTATES GAZETTE, Vol. xl., p. 329.

Purchaser indirectly introduced by agent—Commission recoverable.

The plaintiff was an auctioneer, and his claim was for £49 on account of commission.

He had been employed by defendant to sell by auction seven houses in Skelton Road, Forest Gate, the commission to be 2 per cent. The auction was held, but the property was not disposed of. Subsequently, however, the houses were sold by private contract to a Mr. Samuel Jones, of Stratford, for £2,450, and on this amount plaintiff now claimed 2 per cent.

The plaintiff deposed that he was engaged the morning after the attempted sale in seeking a purchaser, and his call book confirmed this, but the defendant's case was that the purchase had been brought about by Mr. Boddy, to whom £20 commission had been paid.

Mr. Samuel Jones bore this out, adding that he knew nothing of Mr. Liell in the transaction, his attention having been first called to the fact that the property was for sale by the manager of the London and South-Western Bank, at Bow. It appeared, however, that that gentleman had obtained his particulars from plaintiff, who had left printed particulars of the property with him, and it was from these that Mr. Jones, the purchaser, received his original information. Another point was the amount plaintiff was entitled to claim, if any. Plaintiff said 2 per cent., but defendant's case on this point was to the effect that £20 was sufficient for Mr. Boddy, and that plaintiff himself had agreed to take £30, if defendant would sell the property to a Mr. Durell (whom plaintiff introduced) for £2,450.

His Honour having summed up, a verdict was found for the plaintiff for £30.

Mr. Kisch appeared for the plaintiff, and Mr. Jones for the defendant.

Gillow and Co. v. Lord Aberdare.

Court of Appeal, October 27, 1892—Before the Master of the Rolls, Lord Justice Lopes and Lord Justice Kay.

Reported *ESTATES GAZETTE*, Vol. xl., p. 350.

Custom with regard to introducing tenant who afterwards buys the property—Special facts—Breaking off negotiations—Termination of authority.

This was an appeal with reference to an action brought by Messrs. Gillow and Co., for about £200 for commission on the sale of No. 1, Queen's Gate, Kensington Road, S.W., in which judgment had been given for the defendant. The property belonged to Lord Aberdare, who, at the end of 1888, in reply to a circular sent him by Messrs. Gillow and Co., signified to that firm his willingness to let furnished or unfurnished, or to sell, the house in question. The plaintiffs wrote Lord Aberdare that they had a client who would be willing to become the tenant, and who would probably purchase later on, and ultimately Mr. Arthur Tooth, the client in question, became the tenant for five months and subsequently for a period of seven months, at a rental of £1,200 for the twelve months. Messrs. Gillow were paid the full commission on the letting; but Mr. Tooth afterwards treated for the pur-

chase with Lord Aberdare's agents—Messrs. Rogers, Chapman and Thomas. Mr. Tooth eventually purchased the house for £11,500, and Messrs. Gillow contended that as they introduced the tenant who subsequently became the purchaser they were entitled to commission on the sale, according to the custom of house agency. At the trial of the action Lord Aberdare denied that he instructed the plaintiffs to sell, or that he was liable to pay them commission on the sale, which was carried out by Messrs. Rogers, Chapman and Thomas. The case was heard in the Queen's Bench Division on June 29 and 30, and July 1, 1892, and in support of the custom evidence was given by Mr. Christopher Oakley, F.S.I. (Messrs. Daniel Smith, Son and Oakley, 10, Waterloo Place, S.W.), and Mr. Arthur Waghorn (Messrs. Arber, Rutter and Waghorn, 1, Mount-street, Berkeley Square, W.). Among the witnesses called on behalf of Lord Aberdare was Mr. J. H. Thomas, F.S.I. (of the firm of Messrs. Rogers, Chapman and Thomas). The case of "*Giddy and Giddy v. Ross*" was also much discussed as bearing on the custom relied on by Messrs. Gillow. Mr. Justice Hawkins, however, looked upon the question as very largely one of fact, and decided that there was no case to submit to the jury, and gave judgment for Lord Aberdare with costs; and it was against this decision that the present appeal was brought.

The plaintiff's counsel stated the facts to their lordships at length, and submitted that Mr. Justice Hawkins should have left the following questions to the jury:—(1) Were the plaintiffs employed by the defendant to procure a purchaser for the house? (2) Did that employment exist at the time they introduced Mr. Tooth? (3) Did they procure Mr. Tooth as a purchaser? Counsel did not submit any question of the custom of house agents, and admitted that Mr. Tooth did not make an offer to buy from Messrs. Gillow. There had been a dispute between the plaintiffs and Mr. Tooth as to the non-payment of a cheque into the bank, and Mr. Tooth then went to Messrs. Rogers, Chapman and Thomas.

Without calling upon the defendant's counsel their lordships dismissed the appeal.

The Master of the Rolls said that Messrs. Gillow obtained a tenant after Lord Aberdare stated his willingness to let or to sell, and they were paid commission

on the letting. The whole matter between Messrs. Gillow and Lord Aberdare was then at an end. It had been contended that by their introduction the plaintiffs had brought about the purchase; but Messrs. Gillow never seemed to have mentioned to the defendant that Mr. Tooth would buy the house. All Mr. Tooth said was that if he liked the house it was probable he would buy it. There was no arrangement with Mr. Tooth that he should buy the house; and Messrs. Gillow were not authorised to let the house on the condition that Mr. Tooth might purchase twelve months afterwards. If that had been so Lord Aberdare's hands would have been tied. The Court had been told that Mr. Tooth quarrelled with Messrs. Gillow, and would not further negotiate with them, but went to Messrs. Rogers, Chapman and Thomas, through whom the price was fixed and the sale completed. The sale of the house was not brought about by Messrs. Gillow, but by Mr. Tooth himself, who was angry with the plaintiffs and went to another firm. It was perfectly clear that there was no case to submit to a jury.

Lord Justice Lopes observed that there seemed to be some doubt as to whether there was any existing contract. It was impossible that Messrs. Gillow could succeed unless they could say that the sale of the house to Mr. Tooth was brought about by them. There was not an atom of evidence tending to show that they did bring about the sale, and Mr. Justice Hawkins was perfectly right when he refused to let the matter go to the jury.

Lord Justice Kay concurred. He said that the plaintiffs' authority from Lord Aberdare was determined when they found a tenant.

Appeal accordingly dismissed, with costs.

Counsel for the plaintiffs: Mr. McCall, Q.C., and Mr. Ellis; counsel for the defendant: Mr. Channell, Q.C., and Mr. Muir Mackenzie.

Marshall v. Andrews.

Lord Mayor's Court, October 20, 1892.—Before the Assistant Judge and a Jury.

Reported *ESTATES GAZETTE*, Vol. xl., p. 350.

Introducing a party ready and willing to become tenant—Retainer—References.

This was an action brought by Messrs. G. F. Marshall and Co., house and estate agents, against Mr. W.

Andrews, a barrister, to recover £19 2s., 5 per cent. commission on £384, a year's rental of a house situated at 36, Bedford Place, Russell Square, which house the plaintiffs alleged they had let to a third party upon the defendant's instructions.

The defendant was lessee of the house mentioned, and it was alleged that he had instructed Mr. G. F. Marshall, a former member of the plaintiff firm, to find either a tenant or a purchaser for the house. His instructions were to sell for £850, or to let the premises furnished at a weekly rental of seven guineas. The plaintiffs subsequently introduced a purchaser—Miss Stevens. Negotiations took place between the defendant and Mr. Wells, Miss Stevens' agent, with the result that there was an acceptance of the defendant's offer to let the house on a yearly term for seven guineas a week by Mr. Wells, acting on behalf of Miss Stevens, subject to "strong references" being given. A deposit was paid, and three persons were given as references. But from none of the three persons who were mentioned did the defendant receive satisfactory replies as to the financial position of Miss Stevens. Each spoke in the highest terms of her respectability, but neither of the three could say anything as to her financial position. In addition to this the defendant received an intimation from the solicitors having charge of the Bedford Estate that they could not permit the new tenant to turn it into an hotel or a lodging house. Miss Stevens wanted to establish a boarding house at the premises, and in these circumstances the purchase was never completed. The plaintiffs' case was, however, that having introduced a tenant who had always been ready and willing to become the tenant upon the original terms, they had earned their usual commission of 5 per cent. on the first year's rental. The defendant said it was true that his wife carried on a private hotel at the house, but he distinctly told Miss Stevens that it was in contravention of one of the terms of the lease, and that it might be the owner would not permit a new tenant to do the same thing, and she agreed to take the risk. As her references as to her financial position were not satisfactory, the three persons whom she named knowing nothing of her means, he declined to complete. In these circumstances he contended that the plaintiffs had not earned the commission which they now sued for.

The learned Judge ultimately left three questions to the jury. (1) Were the plaintiffs employed at all by the defendant? (2) If so, did they know that any tenant whom they introduced might be refused by the superior landlord? (3) Did they introduce a tenant with "strong references"?

The jury returned a verdict for the plaintiffs for the amount claimed.

Counsel for the plaintiff: Mr. Wildey Wright;
counsel for the defendant: Mr. Poley.

Greig and another v. Melnotte.

Queen's Bench Division, November 11, 1892.—Before Mr.
Justice Cave.

Reported *ESTATES GAZETTE*, Vol. xl., p. 398.

Obtaining tenant for theatre—Commission note.

In this case Mrs. Wilhelmina Greig and Mr. Wade, auctioneer and estate agent, sought to recover from Mrs. Frank Wyatt £1,207 10s. as commission for letting the Trafalgar Square Theatre.

The action was brought to recover commission for securing a tenant for the Trafalgar Square Theatre, which Miss Violet Melnotte had had built for her. It appeared that in 1891 the defendant, Miss Melnotte, was anxious to secure a tenant for her theatre, and she suggested to Mrs. Greig that if she could procure a tenant for the theatre she should receive a commission on the annual rent. On April 24 the defendant gave Mrs. Greig a commission note. The note, which was written by Mr. Wyatt and signed by Mrs. Wyatt, stated that if Mrs. Greig found a tenant for the theatre she should receive 5 per cent. of the first year's rent and 3 per cent. afterwards. Mr. Greig then communicated with Mr. Wade, who sent to a number of persons who were likely to take a theatre, including Mrs. Bernard Beere and Miss Fortescue. In the beginning of 1892 Mr. Levenston saw Mr. Wade, and made an offer for the theatre. Eventually this gentleman took the building on a lease for seven years at a rental of £5,250. The defendant now denied that the plaintiffs introduced a tenant, or that she retained Mr. Wade. He believed his Lordship, after hearing the evidence, would be of opinion the plaintiffs were entitled to a judgment.

Mrs. Greig, one of the plaintiffs, was called, and bore out counsel's statement. In cross-examination she said that when she went to defendant's house she did not tell her she had found a tenant for her theatre, or that Mrs. Langtry was likely to take it. At that time she did not believe that she even knew that Mrs. Langtry was looking out for a theatre. She did not remember defendant pressing her on April 24 to give the name of the person who was likely to take the theatre. She did not suggest that defendant should give her the commission note.

Mr. William Greig, husband of the previous witness, deposed that he had had an interview with Mr. Wyatt, defendant's husband, who gave him the terms upon which it was proposed to let the theatre.

Mr. Wade, the other plaintiff, also gave evidence, and in the result judgment was given for the plaintiffs for an agreed amount with costs.

Counsel for the plaintiffs: Mr. Bigham, Q.C., and Mr. Horace Ivory; counsel for the defendant: Mr. Lockwood, Q.C., and Mr. Crispe.

Platt v. Depree (trading as Cox and King).

Queen's Bench Division, January 19, 1893.—Before Mr. Justice Charles.

Reported *ESTATES GAZETTE*, Vol. xli., p. 77.

Lunatic purchaser—Commission recoverable—Retention of deposit

This was an action to recover £100 (the deposit paid on the sale of the plaintiff's yacht), which the plaintiff alleged he was entitled to, as having been paid into defendants' hands on his behalf.

The defendants were yacht agents carrying on business in Pall Mall. The plaintiff, having a yacht, called the *Jeanette*, for sale, instructed the defendants to find a purchaser for her, and in due course the defendants introduced a gentleman named Thomas Smith, who agreed to buy the yacht for £4,000. It was agreed between the plaintiff and the defendants that the commission payable to the defendants on the sale should be £150. The agreement for purchase was made on August 1, 1891, between Mr. Smith and the plaintiff direct, with the assent of the defendants, and on August 8, 1891, Mr. Smith paid to defendants the sum of £100 as a deposit on the purchase money. On August 20 Mr. Smith's solicitor wired the defendants

that Mr. Smith was insane, which telegram was at once communicated to the plaintiff by the defendants. The plaintiff thereupon replied to the defendants that he contended that the yacht was sold, and that he claimed the £100 as a forfeited deposit, in which view the defendants concurred. The plaintiff, on August 21, instructed the defendants to resell the yacht, and she was ultimately resold. Subsequently to these instructions the plaintiff continued in his letters to claim that the contract with Mr. Smith was a binding contract, and to assert his right to the £100. Afterwards, however, he elected to refund the £100 to Mr. Smith's representatives; and, upon this determination being communicated to the defendants, they gave notice to the plaintiff that they claimed £150 as commission on the sale to Mr. Smith, and refused to hand over to plaintiff the £100 deposit they had received, and which was still in their hands, unless their claim for commission were first satisfied.

The plaintiff contended that the defendants could not claim the £150 unless and until the sale to Mr. Smith was finally completed and adjusted, and that it never had been; in other words, that the contract to find a purchaser was not satisfied by the finding of a lunatic purchaser.

It was admitted by both sides that at the time of the contract neither the plaintiff nor the defendants knew of Mr. Smith's insanity.

The plaintiff contended that the defendants had agreed (with his solicitor, Mr. Budd) to forego their commission if Mr. Smith were proved to be insane at the time of the contract. This was, however, denied by the defendants, who stated they only agreed to waive the extra £50 if they were not troubled with regard to the £100 already in their hands.

The learned Judge, in the result, gave judgment for the defendants with costs, holding that they were entitled to their commission when the deposit was paid on August 8, 1891. The fact of Mr. Smith becoming insane did not interfere with the defendants' rights, since, if Mr. Smith had recovered his senses, he or his representative might have had specific performance of the contract; and, on the other hand, the plaintiff might have insisted on the completion of the contract, for neither the plaintiff nor the defendants were aware of Mr. Smith's insanity at the time of the contract.

The plaintiff, however, chose to adopt the no doubt honourable course of letting Mr. Smith's representatives off the contract, but that was his own affair, and he need not have done so; while the defendants had done all they ought to have done to earn their commission. The learned Judge also thought that the defendants had never waived their right to the sum in question.

Counsel for the plaintiff: Mr. Bucknill, Q.C., and Mr. Muir Mackenzie; counsel for defendant: Mr. Lockwood, Q.C., and Mr. Percy Gye.

Duckworth v. Prickett and Venables.

Westminster County Court, February 23, 1893.—Before his Honour Judge Bayley.

Reported ESTATES GAZETTE, Vol. xli., p. 194.

Original contract rescinded, but agent entitled to recover on a quantum meruit.

In this case the plaintiff sued for certain rents collected by the defendants as his agents, and the defendants pleaded a set-off in respect of commission.

It appeared that in the month of January, 1890, the plaintiff instructed the defendants to sell certain house property by auction at a sale to be held on May 12. On April 30, having sold the property through an estate agent by private treaty, they countermanded the sale. It was accordingly contended by the defendants that, having been prevented by the plaintiff from completing the sale by auction, and having advertised the sale and drawn up the posters and particulars, and done everything but actually sell, they were entitled to the commission calculated on the amount for which the property was sold. On the other side it was argued that the original contract having been rescinded, the defendants were only entitled to be paid their out-of-pocket expenses and what was fair and reasonable for the work they had actually done, for which the plaintiff had allowed the defendants three guineas.

His Honour Judge Bayley took this view, holding that the defendants were not entitled to commission, but only on a *quantum meruit*, and that three guineas was a fair allowance. He gave judgment for the plaintiff.

Counsel for the plaintiff: Mr. H. T. Kemp; counsel for the defendants: Mr. Lynden Bell.

Bailey v. Purdue.

Lord Mayor's Court, March 15, 1893.—Before Sir Charles Hall and a Jury.

Reported *ESTATES GAZETTE*, Vol. xli., p. 267.

Dispute as to division of commission.

This was an action by Mr. John Rush Bailey, described as a financial agent, and an ex-clergyman of the Church of England, to recover £43 commission on certain business introduced to the defendant, Mr. W. Purdue, a mortgage and insurance broker.

The parties became acquainted in October, 1892, when, according to the plaintiff, a mutual business arrangement was entered into by which it was agreed that in respect of all business introduced by the plaintiff to the defendant which resulted in the defendant receiving commission the commission should be shared between them. In November the plaintiff heard through Mr. John Hicks, an insurance broker, that a Captain Davies was desirous of raising a mortgage of £7,000 on a public-house. The plaintiff introduced the matter to the defendant, who had a client willing to advance the money. The £7,000 was, in fact, advanced, and £175 commission was paid on behalf of the borrower to the defendant. Mr. Hicks received half this sum from Mr. Purdue, and he in turn divided the money with a third party interested in the matter. The defendant retained the other half, and, in accordance with the alleged arrangement between them, plaintiff claimed half the amount.

The defendant entirely repudiated the alleged agreement to share commission with the plaintiff, and said the plaintiff, as a fact, had done very little work in the matter. For the services which he had rendered, defendant had offered him £10, which he considered ample remuneration.

The jury found for the plaintiff for amount claimed.

Counsel for the plaintiff: Mr. Holloway; counsel for the defendant: Mr. Lewis Glyn.

Harrison, Bayley and Adams v. Tyers.

Cheltenham County Court, May 19, 1893.—Before his Honour Judge Elliott.

Reported *ESTATES GAZETTE*, Vol. xli., p. 494.

Denial of instructions to sell.

The plaintiffs were suing for commission and expenses on the sale of The Firs, alleging that instruc-

192 COMPENDIUM OF COMMISSION CASES.

tions for the sale were given by the defendant, or by Mr. C. F. Gale, his solicitor, on his behalf.

The plaintiffs' case was that the defendant was the surviving executor and trustee under the will of his father, and the fee simple of a house called The Firs was vested in him. In October of 1890 the defendant called upon the plaintiffs and instructed them to sell the house by auction, and before the auction took place he again called and reduced the reserve from £1,100 to £1,000, at which price the property was eventually on October 30, sold to Mr. George Herbert. In the ordinary course the defendant was applied to by plaintiffs for their commission on the sale, when, on July 2, 1891, he sent a letter in reply to the effect that the house really belonged to Mr. F. C. Gale, but that the latter had paid a portion only of the purchase money—£750 out of £1,400—and that the sole reason why he (defendant) had interfered in the matter was to secure the balance owing to him by Mr. Gale. Defendant added that he was willing to pay plaintiffs £5 towards the expenses if they would give him a full discharge. Plaintiffs, however, wrote on July 7, stating, "We received our instructions from you, and to you we must look for payment."

Mr. Bayley stated that in October, 1890, the defendant called at his office and said he had been to see Mr. Gale, and that they were going to put The Firs up to auction again. Witness had previously, on the defendant's instructions, in 1884 or 1885, offered the property for sale, when Mr. Gale acted as defendant's solicitor. The question of the reserve was discussed, the defendant suggesting £1,100. Witness told him that the land opposite had recently been sold, and that he believed cottages were going to be built upon it, and suggested that the reserve should be £1,000. This suggestion was adopted, and the auction proceeded. Mr. F. S. Gale, son of the defendant's solicitor, attended the sale, and witness saw Mr. G. Herbert, the purchaser of the property, hand him cheques for £5 5s. and £100 deposit money.

The Rev. T. Tyers, the defendant, stated that, as executor of his father's will, he sold The Firs to Mr. C. F. Gale on October 22, 1888, for £1,400, Mr. Gale giving him a cheque for £750 in part payment. The title deeds were at the time in Mr. Gale's office. Mr. Gale took possession of the property, by making cer-

tain alterations to it and by putting in a caretaker at his own expense. Witness had no communication with the plaintiffs after Mr. Gale went into possession until the year 1890. Witness gave Mr. Bayley no instructions or authority to sell. The first intimation of a claim against him for commission was received in May, 1891. In December, 1890, Mr. C. F. Gale was in bankruptcy. The Firs was copyhold property of two manors, and Mr. Gale had not, as a matter of fact, been admitted to the Court Rolls as tenant, because he wished to save expense.

Mr. C. F. Gale stated that between 1888 and 1890 the property was put up for sale (Mr. Bayley being the auctioneer), but did not find a purchaser. He gave instructions to plaintiffs on his own behalf for the sale of the property some time before October.

Mr. Bayley, being recalled, denied having received any instructions from Mr. C. F. Gale to sell the property for himself (Mr. Gale). On the same day that Mr. Tyers called Mr. Gale came and said, "We are going to submit the property again; will you get out the particulars and submit them to me?" He did so, and by Mr. Gale's instructions put on the notices of the sale, "By order of the trustees, to close an estate."

It was then submitted by defendant's counsel that the plaintiffs had failed to prove that they received any instructions from the defendant to sell this property.

His Honour, in giving judgment, said the question of prime importance in the action was not whether Mr. Gale had been admitted to the Court Rolls, but what actually occurred in October 1890. This case was one of some difficulty, but he did not think the evidence was sufficiently strong against the defendant to justify him in giving judgment in favour of the plaintiffs, although he thought the result would be hard upon them. He gave judgment for the defendant.

Counsel for the plaintiff: Mr. Cagney; counsel for the defendant: Mr. Gwynne James.

Harrison, Bayley and Adams v. King.

Cheltenham County Court, May 19, 1893.—Before his Honour Judge Elliott and a Jury.

Reported *ESTATES GAZETTE*, Vol. xli., p. 532.

Commission on sale where tenant becomes purchaser—Special facts—Denial of instructions.

In this case the plaintiffs sought to recover from the defendant commission for negotiating the sale at

194 COMPENDIUM OF COMMISSION CASES.

£2,800 of a house called Oak Manor to Mrs. Nalder, such commission being at the rate of $2\frac{1}{2}$ per cent. on the first £1,000 and $1\frac{1}{4}$ on the remainder.

It was stated for the plaintiffs that they had been instructed by the defendant in the first instance to let the house, and they brought it to the notice of Mrs. Nalder, whom they introduced to the defendant, both as tenant and as prospective buyer of the property. The house was taken on a lease, one of the clauses in which was to the effect that she should have the option of purchase within three years, the price to be fixed by valuation. She eventually became the purchaser of the property at £2,800, which was the sum plaintiffs had ascertained from the defendant the house was purchasable for and which they had mentioned to Mrs. Nalder as the price to be paid. As Oak Manor was, in the first instance, only let, the plaintiffs charged the usual commission for letting, but when they ascertained that a purchase had been effected they sent in their claim for commission on the sale, giving credit, however, for the amount received as commission for letting. It was contended that it could not be maintained because a property was not sold out and out at first, but let to a tenant who was an intending purchaser, that therefore the only claim the agents who introduced the prospective purchaser could set up was one of commission on the letting. The plaintiffs' case was that Mrs. Nalder was a prospective buyer from the first, but that as a prudent person she did not definitely decide to buy until she had tried the house and was satisfied she should like it. Therefore it was that the clause was inserted in the lease giving her the option of the purchase within three years. Within a few months of her tenancy she made up her mind and became the purchaser, and it was submitted that the defendant, having reaped the benefit of the plaintiffs' introduction of Mrs. Nalder to the property, and they having taken all the steps necessary to bring about the relationship of buyer and seller between Mrs. Nalder and the defendant, the plaintiffs were entitled to succeed in their claim for commission on the sale.

Mr. F. G. Adams, a member of the plaintiffs' firm, gave evidence at length in support of their case. He stated that in March, 1892, he met the defendant and had a conversation with him with reference to Oak Manor. Defendant gave him instructions to let the

house, and in consequence of these instructions he made a communication to Mrs. Nalder, who called at his firm's office, and who subsequently went and saw Oak Manor. After Mrs. Nalder had called again at the office, he saw the defendant, and told him his client was disposed to buy, and asked him if he were prepared to sell the house. Defendant replied in the affirmative. Witness thereupon asked, "What price shall I ask the lady with whom I am in communication?" and Mr. King said, "£2,800." Witness at once called on Mrs. Nalder and acquainted her with the selling price, and she told him she would give the matter her consideration, that she would like to try the house before definitely deciding to purchase, and that Mr. Nalder, her brother-in-law, who was a solicitor, would prepare the letting agreement, she having decided to take the house on a lease. Later on Mrs. Nalder and her brother-in-law called at his office with a draft agreement, one of the clauses in which provided that Mrs. Nalder should have the option of purchase at a valuation within a specified time, and when witness saw Mr. King a fortnight afterwards he (defendant) told him that in the event of Mrs. Nalder becoming the purchaser of the property witness should act for him in the valuation. About Christmas time witness saw Mrs. Nalder and expressed the hope to her that she was comfortable at Oak Manor and that she would purchase the property. She replied that it was rather likely that she would do so. It afterwards came to his knowledge that Mrs. Nalder had bought the house. He saw the lady in March last, and asked her what she had completed the purchase for, and she replied, "£2,800." Witness remarked, "That is the very price I mentioned to you when I saw you at Pittville," and she admitted that it was. After the letting his firm sent in their account for commission, £6 10s., and this had been paid; and when it came to their knowledge that the property had been sold they sent in their account for commission on the sale, at the ordinary rates, giving credit, however—as was the custom in the trade where a sale followed a letting—for the amount paid as commission on the letting. In witness's office, where defendant had called two or three times on other business, were displayed cards showing the terms and conditions under which his firm carried on their business.

The witness was cross-examined, and then his partner, Mr. G. H. Bayley, gave evidence, whilst another witness called for the plaintiffs was Mr. F. Pottinger, manager for the firm of Messrs. Young and Gilling, auctioneers and house agents, who stated that there was a custom in the trade that when a purchase follows a letting the house agent introducing the customer charges the usual commission on the sale, but deducts the amount previously charged for commission on the letting, as had been done in the present instance.

The defendant gave evidence to the effect that on March 25, 1892, Mrs. Pryce-Morris, the then tenant of Oak Manor, gave notice to leave, and shortly afterwards he saw Mr. Adams, who asked him if he might find another tenant for the house. Shortly before April 14 in that year Mr. Adams mentioned the name of Mrs. Nalder to him. Up to that date he (defendant) had not the slightest intention of selling Oak Manor; the property was his own and a source of his income; besides which his wife did not wish him to part with it; and it was absolutely untrue that prior to April 14 he had told Mr. Adams he wanted to sell the property, as also was the statement that he told him the price was £2,800. On April 14, 1892, Mr. and Mrs. Nalder came to see him, and that was the first time he had even seen either of the parties, nor had he previously received any communication from them. Mr. Nalder told him that Mrs. Nalder had looked over Oak Manor and was prepared to take it, and asked him if he would give her the option of purchasing it. Witness hesitated for some time, but eventually yielded the point. Mr. Nalder then said he would prepare the lease. It was untrue that the draft lease was in existence on April 14; witness first received the draft on April 22. No sum was mentioned at the interview on April 14 as the purchase price of the house. About three weeks later witness saw Mr. Adams at the Battle-down Inn, and he asked if Mrs. Nalder had been given the option of purchase. Witness replied, "Yes, within a year." That, however, was a mistake; the period of option was to be three years. Mr. Adams also asked if a price had been agreed upon, and on witness replying in the negative, he said, "Then you are very foolish; if you want a valuer, will you employ me?" to which witness replied, "If I do want a valuer I will." Later in the same day, when witness and Mr.

Adams were talking about the value of property in Cheltenham, witness mentioned to him that Oak Manor had cost him £2,800. Witness had never given plaintiffs instructions to sell the property, nor stated to them any price at which he was willing to sell.

The defendant was cross-examined, and Mrs. Nalder and Mr. F. Nalder having also given evidence, counsel for the plaintiff submitted that the evidence and the circumstances connected with the letting made it clear that plaintiffs were employed in that matter and found the tenant. That being so, the custom with reference to the payment of commission on the sale of a house when a tenant became the purchaser clearly should operate in this case. The custom was a reasonable and fair one, because the plaintiffs had been the means of selling the defendant's property.

His Honour left the case with the jury, after simply directing them that if they believed the evidence of Mr. King and of Mr. and Mrs. Nalder their verdict must be for the defendant, while if they believed the statements of Mr. Adams and Mr. Bayley they would find for the plaintiffs.

The jury gave a verdict for the defendant.

Counsel for the plaintiff: Mr. Cagney; counsel for the defendant: Mr. Gwynne James.

Saunders v. Taylor.

Queen's Bench Division, June 1, 1893.—Before Mr. Justice Hawkins.

Reported ESTATES GAZETTE, Vol. xli. p. 550.

Claim for commission on sale where tenant becomes purchaser.

The plaintiff in this action was Mr. Charles Saunders, house and estate agent, of 40, Gloucester Gardens, South Kensington, and the claim was for commission with regard to the sale of the house No. 42, Elvaston Place, South Kensington. Mr. Saunders let the house furnished, and it was stated that he afterwards received instructions from the defendant, Mrs. Taylor, to sell the property for £3,800. The property was introduced by the plaintiff to a tenant who ultimately became the purchaser. After the tenancy commenced the matter of the sale stood in abeyance for a period of some months; but then communications took place between the owner of the property and the tenant, and the purchase of the house was completed at the sum of £3,500. The plaintiff, it was stated, had previously

198 COMPENDIUM OF COMMISSION CASES.

suggested to the tenant who became the purchaser that he should offer such a sum for the house, but he did not hear anything more of the matter of the sale until after the completion of the purchase. Mr. Saunders received from the defendant a commission on the letting, and sought in this action to recover commission on the sale, giving credit to the defendant for the commission previously received by him in respect of the letting. He now claimed £88.

After hearing the evidence of the plaintiff and of the defendant and the purchaser his Lordship gave judgment for the defendant.

Counsel for the plaintiff: Mr. Lockwood, Q.C., and Mr. Houghton; counsel for the defendant: Mr. McCall, Q.C., and Mr. G. H. Scott.

Joyce v. Jones.

Westminster County Court, June 7, 1893.—Before his Honour Judge Lumley Smith.

Reported *ESTATES GAZETTE*, Vol. xli., p. 550.

First introducer—Alleged breaking off negotiations.

The plaintiffs were Messrs. Joyce and Hall, a firm carrying on business at Spring Gardens, Charing Cross, and they sued the defendant, Dr. Jones, to recover commission at the rate of $7\frac{1}{2}$ per cent. on the first year's rental of his premises at King William Street, Charing Cross.

It appeared from the facts, as opened for the plaintiffs, that in February, 1893, it came to their knowledge that the lease of the premises in question was for disposal, and in the ordinary course of business they obtained an authority from the defendant's solicitors to place it on their books with the understanding that if they procured a purchaser they were to be paid the usual commission. A short time after that the plaintiffs introduced the property to a firm of the name of Wilson and Long, and one of the plaintiffs, Mr. Joyce, accompanied Wilson when he went to look at the place. The outcome of it was that Wilson made an offer to purchase, but after some negotiations it was rejected by the defendants, and was subsequently withdrawn. The matter was never withdrawn from the plaintiffs' hands, however, and some few weeks later Mr. Joyce heard quite accidentally that the property had been sold to Wilson after all. He then made a claim for his commission on the ground that he was the first introducer

of the purchaser, but the defendant disputed his liability on the ground that the negotiations which were opened up by the plaintiffs in the first instance had all been put an end to, and that a fresh arrangement was carried out by the defendant and the purchaser through the intervention of a friend of the parties named Gilbert.

Mr. Horace Francis Joyce was called, and said he visited the place personally together with Wilson, who afterwards made an offer, but it was not accepted because it was considered by the defendant to be too low. Some time later witness had an interview with the defendant, who told him that he was re-opening negotiations with Wilson through the assistance of a friend named Gilbert, and that if the matter went through all right he (plaintiff) should have his commission just the same as if he had personally conducted the sale. Shortly after the witness heard that Wilson had purchased the place, and he accordingly made a claim for his commission, but defendant refused to recognise his liability, and consequently these proceedings were commenced. In cross-examination Mr. Joyce denied that he had ever made any suggestion to the defendant to the effect that he would be content to accept a present for the trouble he had been put to.

For the defence Mr. Oswald Wilson was called, and said he was the person who purchased. He first heard of the premises through a friend, but the matter was subsequently put before him by the plaintiffs, to whom he made an offer, but it was rejected by the vendor, and he at once withdrew it by letter to the plaintiffs, and that was an end of the matter so far as he and the plaintiffs were concerned. Some time later he was again spoken to on the subject by a friend of his named Gilbert, and the result was that, through an introduction which he got to the vendor, he decided to purchase, and was now in possession. The plaintiffs had nothing whatever to do with the matter as far as he knew.

The defendant, Mr. David John Jones, was next called, and corroborated the evidence of the last witness. When the sale to Wilson took place all negotiations through the plaintiffs had been put an end to. He would swear positively that he never promised to pay Mr. Joyce commission in any event. What he did say was that he was willing to give him a present to repay him for his trouble.

200 COMPENDIUM OF COMMISSION CASES.

His Honour, in delivering a lengthy judgment, said that these commission cases were always a little bit difficult to deal with, as they were generally fought on such narrow lines that where one judge would find for one side it was equally likely that another would find for the other. The whole question in the present case was as to whether or not the negotiations which had admittedly been set on foot by the plaintiffs were put an absolute end to and started on a fresh basis through the intervention of Mr. Gilbert. He (the judge) had come to the conclusion that such was not the case, and that the negotiation through Gilbert was simply a re-opening of what had some time previously been started by the plaintiffs. He thought therefore that the plaintiffs had properly earned their commission, and judgment would be in their favour for the amount claimed with costs.

Lott v. Outhwaite.

Court of Appeal, November 16, 1893.—Before Lords Justices Lindley, A.L. Smith and Davey.

Reported *ESTATES GAZETTE*, Vol. xlii., p. 496.

Purchase not completed—No default of vendor—Commission not due.

This was an appeal by the plaintiff against the judgment of Mr. Justice Bruce at the trial of the action without a jury. The action was for £462 10s., commission on the sale of an estate. In 1886 a Mr. Outhwaite was the owner of a building estate, called the Portobello Estate, at Henley-on-Thames. He wished to develop this estate, and for this purpose he, through a Mr. Plumbe, entered into communication with Mr. F. W. Frost, who thought he could find a purchaser for the estate. On September 10, 1886, Plumbe wrote to Frost that Mr. Outhwaite would accept £19,000 for the land (about 81 acres) and "allow you 2½ per cent. bonus on completion of the purchase." On September 14 Frost accepted this offer, and gave the name of his client, who was willing to become purchaser, as Mr. C. P. Deane. On October 4, 1886, an agreement was entered into between Mr. Outhwaite and Deane for the purchase of the estate by the latter for £18,500, to be paid as follows:—£925 as a deposit immediately after the signing of the agreement, and the residue thereof on the completion of the purchase. The purchase was

to be completed on January 1, 1887. If not then completed the purchaser was to pay to the vendor interest on the residue of the purchase money, at 4 per cent. per annum, until completion. The deposit was paid, and the vendor's title was accepted by the purchaser. Deane was unable to complete at the appointed time, and on May 24, 1887, a second agreement was entered into between Outhwaite and him. By this agreement it was provided that the purchaser should, immediately upon the signing of the agreement, pay to the vendor £3,000, by way of an additional deposit on account of and in part payment of the purchase money; that the time for the completion of the purchase should be extended to July 31, 1887, on which day the purchaser would complete; that at any time before that day the purchaser should, subject to certain provisions as to the approval of the vendor, be at liberty to offer portions of the estate, described as lots 6 and 7, or any part or parts thereof, for sale, but the vendor or his nominee should receive the whole of the purchase moneys of all or any of the pieces of land which might be so sold up to the sum of £4,000. The £3,000 deposit was paid by Deane, and, by means of sub-sales made under the provisions of this agreement, Outhwaite received a further amount exceeding £3,000. In the whole he received upwards of £7,000. Deane, however, failed to complete the purchase in its entirety, and ultimately the contract was rescinded, except to the extent of the sub-sales. This action was brought by a lady, to whom Frost had assigned his interest, against the executors of Outhwaite, who had in the meantime died, claiming the commission on the whole £18,500, or, at any rate, a remuneration on a *quantum meruit*. The learned Judge held that, as the contract for the purchase of the estate had never been completed and the vendor was not in default, Frost was, under the terms of his agreement, not entitled to any commission, and therefore the plaintiff could not recover anything. Judgment was therefore given for the defendants. The plaintiff appealed.

The Court dismissed the appeal.

Lord Justice Lindley said that, in order to entitle himself to his commission, the agent must prove either that the purchase had been completed, or that, if it had not, the non-completion was due to the default of the vendor. Had the purchase in the present case in any

202 COMPENDIUM OF COMMISSION CASES.

fair business sense of the word been "completed"? The answer must be, unquestionably, No. Deane had admitted in cross-examination that he was unable to complete. The vendor had not been in default. He gave the purchaser facilities for completing the contract in bits. The purchaser paid £3,000, and the vendor received a further sum of £3,000 from sub-purchasers. There the thing stopped. The purchase had never been completed, and there had been no default of the vendor. It was said that there was an implied contract to pay the agent a *quantum meruit* for his services. The answer was that there could be no implied contract when there was an express contract. The appeal must be dismissed.

Lord Justice A. L. Smith and Lord Justice Davey concurred.

Counsel for the plaintiff: Mr. Crispe; counsel for the defendants: Mr. Channell, Q.C., and Mr. Atherley-Jones.

Collins v. Oliver.

Court of Appeal, November 22, 1893.—Before the Master of the Rolls, and Lords Justices Lopes and Kay.

Reported ESTATES GAZETTE, Vol. xlii., p. 507.

Employment of more than one agent—Original introducer entitled to commission.

This was an application made by the defendant, Mr. R. D. Oliver, an artist, for judgment or a new trial on appeal from verdict and judgment given for £177 10s. in respect of commission earned by the plaintiffs, Messrs. Collins and Collins, land agents and surveyors, 34, South Audley Street, who averred that they introduced the purchaser of the house, 38, Grove End Road, St. John's Wood. The trial was before Mr. Justice Mathew and a special jury.

The evidence showed that Mr. Henry Moses, clerk to Messrs. Collins and Collins, called with his father at defendant's house one Sunday morning. Mr. Oliver said he wanted to sell the house, and Mr. H. Moses mentioned as a probable purchaser Mr. Hoare. Mr. Oliver gave him particulars of sale, and tacitly agreed to pay his firm's commission if the sale was made through them. Two offers of £7,000 and £8,000 were made by Mr. Hoare through them, and on December 10 Mr. Henry Moses, at his

father's shop, gave defendant a card on which was written Messrs. Collins and Collins' terms of commission. Mr. Hoare went to view the property with Mr. R. J. Worley, his architect, and the latter stated he would go to see Messrs. S. B. Clark and Co., whose name was on the board outside the house, and who had previously put the property up to auction. Mr. Hoare told Mr. Worley the property was introduced to him by Messrs. Collins and Collins, and gave him directions not to go beyond £8,500. Mr. Worley went to Messrs. Clark and Co., of New Cavendish Street, and this firm prepared the contract and were paid commission by defendant. The jury found (1) that there had been a contract; (2) that Mr. Hoare's name was mentioned by Mr. H. Moses at the first interview; (3) a verdict for the full amount claimed, £177 10s.

It was contended for the defendant that there was no evidence of contract to justify commission being paid to plaintiffs, that the judge misdirected the jury, and did not tell them the nature of the alleged contract; and that defendant, by stating at the first interview that the sale was in the hands of trustees, did not contract with plaintiff.

The Court dismissed the appeal.

Lord Justice Lopes said he thought there was no misdirection. He considered no case had been made out that the verdict was against the weight of evidence. He went further, and said if he had been on that jury he should have found there had been a contract. It appeared to him there had been a contract entered into between plaintiff and defendant, through the medium of the clerk, Mr. Henry Moses. Some kind of contract was made, beyond question. What was it? It was an agreement by defendant to pay commission if plaintiffs found a purchaser, and through the plaintiffs' introduction, Mr. Hoare ultimately became the purchaser. To his mind it was absolutely clear that the sale was through the introduction of plaintiffs. Messrs. Clark never heard of Hoare; and if defendant had waited for any length of time the purchase would not have been effected as far as Messrs. Clark and Mr. Hoare were concerned. Mr. Hoare was introduced to the property by Messrs. Collins, and Messrs. Clark had nothing to do with it on behalf of the purchaser. The plaintiffs were entitled to their commission. He knew it was said that the ultimate conclusion of the

204 COMPENDIUM OF COMMISSION CASES.

sale was brought about by Messrs. Clark. It seemed that Messrs. Clark received private information of the minimum price the property would be bought at, and then stepped in. They knew nothing of Mr. Hoare; they did not introduce Mr. Hoare. The person who did introduce Mr. Hoare was Messrs. Collins and Collins only. Paying the commission to Messrs. Clark did not alter the construction of the contract, and he thought the verdict of the jury was right.

Counsel for the plaintiffs: Mr. Channell, Q.C., and Mr. Wedderburn; counsel for the defendant: Mr. Cyril Dodd, Q.C., and Mr. Spokes.

Barker and Neale v. Macnaghten.

Queen's Bench Division, June 7, 1894.—Before Mr. Justice Charles.

Reported *ESTATES GAZETTE*, Vol. xliii., p. 645.

No effective introduction by plaintiffs—Commission not recoverable.

The plaintiffs, a firm of house agents, surveyors and auctioneers, carrying on business at 25, Motcomb Street, Belgrave Square, sued the defendant to recover £67 10s., as commission upon the sale of the lease of a house, No. 25, Chester Square, which they alleged they were employed to sell for the defendant. The defendant, while admitting that he had placed the house in the plaintiffs' hands for sale, and that they had in the first instance brought it to the notice of the ultimate purchaser, Major Romilly, pleaded that the sale had been brought about and carried through, not by the plaintiffs, but by Messrs. G. Trollope and Sons, auctioneers, surveyors and estate agents, 7, Hobart Place, Eaton Square, S.W., to whom the defendant had already paid a commission. The plaintiffs' case was, shortly, that prior to March, 1893, the house in question was placed in their hands for sale by Mrs. Macnaghten, and that upon her death in that month her son and executor, in reply to a letter from the plaintiffs, had continued the agreement, and had stated that as he wished to dispose of it as quickly as possible no reasonable offer would be refused. That letter was dated March 28, and in it the defendant had in substance stated that he would not pay the plaintiffs' commission unless their introduction resulted in business. The plaintiffs had accordingly advertised the defend-

ant's property in several newspapers, and Major Romilly, while in Malta, had seen the advertisement, and had, in consequence, on May 10, called and seen the plaintiffs about the purchase of the lease. They had given him a view order, and had at his request obtained an inspector's report as to the drains, etc., whose fee the Major paid. On May 29 Major Romilly made an offer, through the plaintiffs, of £2,300, which the defendant declined, plaintiffs receiving an offer of £2,400 from another gentleman at the time. It appeared that about this time Major Romilly had gone to the defendant's other agents for the sale of this house—viz., the Messrs. Trollope—and upon June 2 he made, through them, an offer of £2,600, which the defendant accepted, paying these agents the usual commission on the sale. In November the plaintiffs, through their representative, Mr. Scott, for the first time discovered that the house was sold, and they at once wrote to the defendant refusing payment of their commission. The defendant refusing to recognise their claim, the present action was brought. The learned Judge, at the close of the opening, observed that the whole question turned upon the terms upon which the defendant had engaged the plaintiffs, and a somewhat lengthy correspondence was read and put in in order to show what the real contract between the parties was. Mr. Barker, a member of the plaintiffs' firm, and Major Romilly were called. The latter stated that he made an offer of £2,300 through the plaintiffs, and after he had received the letter of May 30 from the plaintiffs saying that the defendant was not likely to entertain it, he had gone to see Messrs. Trollope with the object of finding another house; while there they had incidentally mentioned the defendant's house to him amongst others, and he repeated to them the same offer as he had made to the plaintiffs, which was refused. He had then, he believed, made an offer for £2,500, and on being told by Messrs. Trollope that it would not be accepted, he had finally offered £2,600, which was accepted. In cross-examination he said that after the plaintiffs' letter of May 30 declining his offer of £2,300, he had given up all intention of buying this house, and his negotiations with them were entirely broken off, and when he went to Trollope's he had no idea that they had this house on their books. They reintroduced it and he bought it through them.

206 COMPENDIUM OF COMMISSION CASES.

At the close of the plaintiffs' case it was submitted that, on the terms of the employment as contained in the defendant's letter of March 28, the plaintiffs had done all that they were bound to do to become entitled to their commission; and, further, that where a house or property is in the hands of several agents it was the agent who first introduced the ultimate purchaser who was entitled to commission.

In the course of the legal arguments, "*Miller v. Toulmin*," "*Mansell v. Clements*," "*Barnett v. Brown*," and other cases were quoted.

Mr. Justice Charles gave judgment for the defendant, without calling upon counsel for the defence. He was sorry to be obliged to do this, because, reading the correspondence, there was no doubt plaintiffs had done very hard work and shown very great ability. The question was whether or not, under the terms of the contract between the plaintiffs and the defendant, the plaintiffs were entitled to be paid the commission claimed upon the sale of the defendant's house. The terms of that contract were contained in the defendant's letter of March 28 to the plaintiffs, in which he said that it was to be clearly understood that he was to pay them no commission unless they introduced a client with whom business was done; or, in other words, that to earn their commission the plaintiffs must introduce someone with whom they were to carry out this business. It was possible that that letter might bear the meaning suggested on the plaintiffs' behalf—viz., that the plaintiffs were entitled to commission if they introduced a person who should ultimately carry through the business with someone else—though that was not his view. But, even assuming that construction on the facts, had the plaintiffs' introduction of Major Romilly to the defendant brought about the relationship between them of buyer and seller? On the Major's evidence it clearly did not, so that in either view, on the facts, the plaintiffs failed, and the defendant was entitled to judgment. The learned Judge declined to make any special order as to costs, and, with regard to the plaintiffs' out-of-pocket disbursements, said he could do no more than express the opinion he had already expressed—that he thought defendant should pay them, although plaintiffs had not asked him to do so.

Counsel for the plaintiffs: Mr. Eustace Smith; counsel for the defendant: Mr. Jelf, Q.C.

Bance, Hunt and Co. v. Bailey.

Southampton County Court, June 5, 1894.—Before his Honour Judge Leonard and a Jury.

Reported ESTATES GAZETTE, Vol. xliii., p. 666.

Authority of auctioneers—Provisional contract.

The plaintiffs, auctioneers, of Southampton, sued the defendant, of Curzon Street, Derby, to recover the sum of £25 15s., being commission on the sale by them as auctioneers, and defendant's agents, of property, known as and being Nos. 12, 14, 15 and 16, Manchester Street, Southampton, for the sum of £1,030.

The question at issue was as to whether or not the sale did actually take place. The plaintiffs sold the property for £1,030, and then when the purchaser's solicitors wrote to the vendor's solicitors to ask for the usual steps to be taken to furnish the title deeds, two points were raised which had not been previously raised. They inserted, or wished to insert, in the contract two provisions: First, that the purchaser should pay all the costs to be incurred by the vendor; and, secondly, they wished a right of way which had existed for many years in respect of the property, and which was of course of considerable value, should be done away with. The real question was as to whether the auctioneers had any instructions as to the inclusion of those provisions in the contract. Considerable correspondence was read which had taken place between the parties, in which the plaintiffs stated that their commission would be £25, whilst the defendant offered to sell for £1,030. On June 19, 1893, Mr. Ashford agreed to purchase at this price, and on that date agreements were exchanged, and Mr. Ashford then paid a deposit of 10 per cent.

Mr. Edward Bance, the senior partner in the firm of Messrs. Bance, Hunt and Co., stated that his instructions were simply to sell the property, as he took it, as it had existed for many years. The contract for the sale of the property was signed on June 19 by Mr. Ashford, and after the signature had been affixed, as agents, his firm ceased to have anything more to do with the matter. Up to that time they had had no instructions, either that the purchasers would have to pay the costs, or with respect to the right of way. It was through no fault of his that the purchase was not completed.

Cross-examined: He claimed that being instructed to find a purchaser clothed him with authority to enter into a contract over the matter. The contract was simply a conditional and provisional one, and the formal one had to be drawn up by solicitors. As auctioneers, they were authorised to sell under provisional contracts, and, although provisional, the vendors had no right to alter the contracts after the property had been sold. He considered when he sold the property that the right of user of the roadway at the back went with the purchase. He returned Mr. Ashford's deposit money on July 14, on his application, and he did it because he considered the variation of terms by Mr. Bayley had nothing to do with the purchaser. He considered that under the circumstances his firm had no right to retain the money, considering the provisions, which were subsequently inserted.

His Honour: You entered into the contract and then rescinded it by returning the money; how, then, can you claim to have sold it?

Witness: As the vendor altered the provisions, we had no right to retain the money.

In answer to a further question, witness contended that they in no way altered the terms of the signed contract by returning the deposit.

After some other evidence it was contended for the defendant that the contract was merely a provisional one, and that Messrs. Bance and Co. did not introduce a purchaser. The property was not sold at all, though the claim was for commission upon the sale. The property was afterwards actually sold through another firm, and the commission had been paid.

His Honour summed up the case to the jury, who found a verdict for the plaintiffs.

Owers v. Woodward and Co.

Westminster County Court, June 7, 1894.—Before his Honour Judge Lumley Smith.

Reported ESTATES GAZETTE, Vol. xliii., p. 666.

Authority of auctioneer to take a deposit.

This was an action to recover the sum of £10 paid to the defendants, who are a firm of house agents carrying on business in Regent Street, by way of a deposit paid by the plaintiff to the defendants in respect of the purchase of a ground rent of £5 a year.

Counsel for the plaintiff, in opening the case, said the facts were of a somewhat peculiar character. In the early part of the present year a Mr. McKenna, who represented the vendor of the ground rent in question, called at the defendants' place of business and told them that if they could find a suitable purchaser for it they should have a commission of £5, but on no account were they to enter into a contract with anyone until the consent of the vendor or his representatives had been obtained. Shortly afterwards the defendant intimated that they had found a purchaser with whom they had made a contract, and that he had paid them a sum of £10 as deposit. They were at once informed that this was in direct conflict with the instructions given to them, and that the vendor would repudiate their authority to accept a deposit without his consent. They were also advised to at once return the £10 to the plaintiff, but they declined to do so, and this action was therefore brought.

Mr. McKenna was called, and bore out the opening statement of counsel. He distinctly told defendants not to enter into any arrangement for the sale without receiving explicit instructions to that effect, but told them that if they procured a purchaser who was approved of they should have a commission of £5.

For the defence Mr. Woodward was called, and repudiated the suggestion that he was employed upon such terms as had been alleged by Mr. McKenna. He was instructed in the usual way to find a purchaser for the ground rent, and when he had done so and got a deposit of £10 on account, he asked McKenna if he should complete the matter, and the latter thereupon gave him instructions to do so. He afterwards heard that his authority was repudiated, but from first to last he was under the impression that he had all the powers to act as agent for the sale of the property.

Counsel for the defence submitted that it was clear upon the evidence that his client was given full authority to act as agent, and in that capacity to accept a deposit.

His Honour said that the cases on the point all went to show that the agent had not the authority to take a deposit, but had only authority as agents to bring the parties together. It was for the defendant in this case to prove his authority to do something which the law did not give him authority to do. The evidence of

210 COMPENDIUM OF COMMISSION CASES.

the parties was in direct conflict, but on the whole he (the judge) thought the plaintiff's version was the most consistent one. Judgment therefore would be for the plaintiff for the return of the £10 with costs.

Hampton and Sons v. Bruce.

Queen's Bench Division, June 26, 1894.—Before Mr. Justice Mathew and a Special Jury.

Reported ESTATES GAZETTE, Vol. xliii., p. 730.

Rate of commission—Usual terms.

This was a claim for £1,058 for commission by Messrs. Hampton and Sons, house and estate agents, 1, Cockspur Street, Pall Mall, against Mr. A. Hamilton Bruce, who employed the plaintiffs to sell the mansion and about 1,300 acres, known as North Mymms Park, Hatfield.

The claim was for £579, balance of commission for procuring a purchaser of North Mymms Park Estate, belonging to the defendant, at £67,000. The defendant admitted that he employed the plaintiffs, and that the sale was effected through them, but denied that he agreed to pay the sum claimed or that it was reasonable. On May 31, 1892, a representative of the plaintiff's firm, Mr. Robertson, had an interview with the defendant which extended to nearly three hours, and the defendant agreed to pay the commission usual in such cases, if plaintiffs procured a purchaser for the property, consisting of a mansion, farms, and lands, known as the estate of North Mymms Park, together with the timber and outdoor effects. From that date, Messrs. Hampton and Sons entered the particulars on their books, and up to the time that the purchase was completed in January, 1893, frequent interviews took place between the parties. Mr. Hamilton Bruce was often at the offices of the plaintiffs, sometimes for two hours a day and two or three days a week, and a considerable amount of work was done by Messrs. Hampton and Sons. But the latter were not the sole agents for the property, and it was not placed exclusively in their hands. It was placed in the hands of two or three other firms also, and the usual agreement was made that the agents who procured the purchaser should obtain the commission, and unless a sale had been effected by Messrs. Hampton and Sons not a single half-penny would have gone into their pockets in respect of their trouble and expense. They brought the par-

ticulars of the estate to the notice of Mr. Burns, the purchaser, arranged for his agents' (Messrs. Trollope) inspection, had numerous interviews during the nine months' negotiations with these agents, and ultimately arranged for Mr. Burns' inspection of the property, which proved satisfactory. They went to the expense of surveys, wrote letters, and carried on negotiations. In connection with the surveys, not one penny was charged, and the commission claimed would cover the expense and trouble. Upon enquiry by Mr. Bruce what was their commission, they handed him a printed form, which Mr. Robertson said he put in his pocket. This contained the terms of their commission, viz. :— 5 per cent. on first £100, £5; 2½ per cent. on £5,000, £125; and 1½ per cent. on £61,900, £928 10s. After further interviews and correspondence, the plaintiffs finally sold the estate to Mr. Burns, in February, 1893, for £67,000, inclusive of timber and outdoor effects. The commission on the purchase money was £1,065 10s., which was considered usual, reasonable, and proper, and plaintiffs also claimed £50 for sale of four pieces of tapestry, and £5 11s. expenses.

The witnesses subpoenaed for the plaintiffs were Mr. W. R. Peck and Mr. H. H. Robertson, of Messrs. Hampton and Sons, 1, Cockspur Street; Mr. Cook, of Messrs. E. and H. Lumley, 22, St. James's Street, S.W.; Mr. C. Phillips, of Messrs. Walton and Lee, 33, Mount Street, Grosvenor Square; Mr. Henry C. Trollope, of Messrs. Trollope, 7, Hobart Place, Halkin Street, and Westminster; Mr. Allen Drew, of Messrs. Debenham, Tewson, Farmer and Bridgewater, 80, Cheapside, E.C.; Mr. Boyton, of Messrs. Elliott, Son and Boyton, 6, Vere Street, W.; and Mr. Samuel Clark, of Messrs. Samuel B. Clark and Son, 8, New Cavendish Street. Several witnesses were also subpoenaed on behalf of the defendant, including Mr. Daniel Watney, F.S.I., 33 Poultry, E.C.

In the result the case was settled, the defendant to pay £240 beyond the sum of £510 already paid on account of commission, making a total of £750 commission for the sale of the estate.

His Lordship entered a verdict for the amount, with costs.

Counsel for the plaintiffs: Mr. Channell, Q.C., and Mr. Gregson Ellis; counsel for the defendant: Mr. Bigham, Q.C., and Mr. Wills.

Dickins and Co. v. Coldwells.

Croydon County Court, October 15, 1894.—Before his Honour Judge Lushington.

Reported ESTATES GAZETTE, Vol. xlv., p. 434

Letting house—More than one agent employed—Order to view.

This was a claim by the plaintiffs, auctioneers and house agents, of George Street, Croydon, for £4 5s., commission on the letting of the house, Blenheim, South Croydon, for the defendant.

The plaintiff's manager said that he received the order from Mrs. Coldwells to put the house on their books to let. That was on December 2, 1893. Mr. Coldwells was then residing in the house. One of their boards was then put up in front of the house. Defendant resided there five or six weeks after that, and must have seen the board. Mr. W. Hales, of No. 8, Park Hill Rise, Croydon, called upon witness with reference to the house, and received an order to view. Full particulars were given to him, and he eventually took the house. He knew Mr. Hales went with their order to view the house. That order was given on January 6. On January 9 he had an order from the defendant to go to Messrs. Bowditch and Grant for the key.

His Honour: Your point is that Mr. Hales got an order to view from you on January 6?

Mr. Dees: Yes, that was so.

Mrs. Coldwells stated that Bowditch and Grant were appointed their agents from the first, and she told the witness that was so. But he replied that it did not matter if a dozen boards were put up, as they would only have to pay commission to the one who let the house.

His Honour: Who do you say let the house?

Mrs. Coldwells: Bowditch and Grant, most undoubtedly.

Mr. Hales was then called, and he said first of all he went to the plaintiffs for an order to view the house early in January, which they gave him. He knew the house was to let. He went to the house and found it closed, and then went to Bowditch and Grant, because of the notice in the window to the effect that the key was to be had from them. He went there, got the key, looked over the house, and took it. He first went to Dickens and Co. because their board was in front of the house. There were two boards there, but he did not know either one firm or the other.

His Honour said that the case seemed to him very clear, and that it was against her.

Mrs. Coldwells: But why should we pay two house agents to let one house?

His Honour replied that he had nothing to do with that. He said nothing about Messrs Bowditch and Grant, but he thought defendant was liable to Messrs. Dickens, and he therefore gave a verdict for the plaintiffs for the £4 5s.

Hammond v. Feast, Hastie and others.

Queen's Bench Division, October 26, 1894.—Before Mr. Justice Bruce and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. xliv., p. 490.

Alleged agreement by correspondence—Denial of retainer.

In this action John George Hammond, a marine auctioneer and estate agent, of Tower Street, E.C., sued the defendants upon alleged agreements made between him and the defendants in May and June, 1893, by which he alleged it had been agreed that he should be paid £500 commission if he succeeded in selling for the defendants the premises where the Pelican Club was formerly carried on. These premises were, in fact, purchased in August, 1893, by the National Telephone Company for £10,000. The plaintiff alleged that it was through his agency that the sale resulted. There were two sets of defendants—viz., Mr. Walter W. Feast, who was the trustee for a Mr. H. H. G. Wells, the second mortgagee of the property in question; and Mr. A. H. Hastie and others, who were the first mortgagees. Mr. Feast, in his defence, denied that he had ever agreed to pay the plaintiff the sum of £500, or any other sum, as commission or otherwise on the sale of the Pelican Club, and denied that the plaintiff had done any work for or rendered any services to him at his request. Upon this defence the plaintiff joined issue. The other defendants, in a separate defence, denied any such agreement as alleged, and that the plaintiff had ever been employed, as alleged, by them or with their authority. The plaintiff to this replied by a joinder of issue and a plea that the defendant Hastie was a member of the firm of solicitors who acted, or purported to act, with the authority of the mortgagees, and that if, contrary to the plaintiff's contention, the said firm of Hastie had no authority to agree

214 COMPENDIUM OF COMMISSION CASES.

on behalf of these defendants to pay the said commission, such defence could not avail the defendant Hastie.

The plaintiff's case was shortly in substance that in May last he had met the defendant Feast in Tower Street, who told him that the mortgagees of the Pelican Club were anxious to sell it, and it was then agreed that if the plaintiff sold it he should receive a commission. He further stated that on June 19 he had seen a Mr. Williams, of Messrs. Hastie, the solicitors who were acting for the defendant Feast and the other defendants; and it had been then agreed that the plaintiff was to receive a sum of £500 in the event of a sale. This he alleged was embodied in a letter delivered by the plaintiff on June 19, 1893, to Messrs. Hastie, and replied to by them on June 21, giving him the refusal of the property for 14 days. Upon these letters the plaintiff relied as establishing his case. In the course of the case it was stated that the property was ultimately sold to the National Telephone Company for £10,000, that it had been mortgaged to the first mortgagees for £8,000, and to the second mortgagees for £2,500. It also appeared that before Mr. Feast had mentioned the property to the plaintiff it had been put up for sale by auction by Messrs. Foster and Cranfield. It also transpired that the final offer of £10,000 had come through Messrs. Foster and Cranfield, whose names were, as agents, displayed on the board on the premises in question, and that they had been paid £250 as commission in respect of the sale. It also appeared that until Mr. Vigers came to Messrs. Foster and Cranfield on July 17, 1893, and submitted an offer of £9,500 on behalf of the National Telephone Company that firm had had no negotiations with that company in this connection. The question was, therefore, whether under all the circumstances the plaintiff was entitled to be paid commission; and, if so, to what amount and by whom? A considerable amount of evidence was adduced on either side.

In the course of his summing up, the learned Judge pointed out to the jury that, even supposing that the letters relied upon by the plaintiff did not constitute a contract, yet they must say whether looking at the conduct of the defendants under all the circumstances, the plaintiff was reasonably justified in believing that, in the event of his negotiations resulting in a sale, he would be paid a reasonable sum to remunerate him for

his trouble. And if so, what that sum was to be they must decide.

The jury, after a short deliberation, found a general verdict for the plaintiff for £250 against all the defendants on the record.

Mr. Justice Bruce gave judgment accordingly.

Counsel for the plaintiff: Mr. Channell, Q.C., and Mr. Rufus Isaacs; counsel for the defendants: Mr. Bucknill, Q.C., and Mr. Penn Gaskill, and Mr. Pike, Q.C., and Mr. Hansell.

Bailey and Leslie v. The Commercial Union Assurance Company (Limited) and Owen.

Queen's Bench Division, October 30, 1894.—Before the Lord Chief Justice and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. xliv., p. 490.

Agreement to pay commission denied.

This was an action by a Margate estate agent and an agent of the defendant company at Highbury to recover commission alleged to be due on the sale of the defendants' late offices in Cornhill to Lloyds' Bank for £175,000. The short facts of the plaintiffs' case were as follows:—In 1892 a Mr. Gay was manager of one of Messrs. Lloyds' banks at Margate, and he was aware that the defendant company and Messrs. Lloyds occupied adjoining premises off Cornhill, and that they were both outgrowing their premises. It occurred to him that if the defendants sold their premises to the bank it would be a good thing, and he accordingly saw Mr. Howard Lloyd, the managing director of the Bank, who told him he might make inquiries in the matter, but must not compromise the bank. Mr. Gay then spoke to Mr. Bailey, who in turn spoke to Mr. Leslie, and that gentleman called upon Mr. Owen, the manager of the defendants' "fire" department, and Mr. Young, the manager of the "life" department, and told them that probably the bank would buy the Union's premises, adding that he should expect commission if business were done. This was in July, 1892, and in December Mr. Harris, one of the defendants' directors, was in communication with Mr. Hoare (on behalf of the bank) on the subject of a purchase by the bank. The transaction was eventually carried out in January, 1893, for the sum of £175,000. When, however, the plaintiffs claimed commission, their claim was ignored,

216 COMPENDIUM OF COMMISSION CASES.

and they were compelled to bring this action. The defendants' case, on the other hand, was that nothing whatever was said about any commission being paid and that, in fact, the directors of the two companies did not need any introduction, as the question of one company buying up the other's premises had been for a long time contemplated. As a matter of fact, the negotiations were carried through without any reference to the plaintiffs or knowledge of their intervention in the matter. Evidence was given on both sides as to the alleged stipulation for commission on the occasion of Mr. Leslie's interview with Mr. Owen. At the conclusion of the defendants' case his Lordship directed judgment to be entered for the defendants, the Commercial Union, with costs, on the ground that there was no evidence to make them liable.

Counsel having addressed the jury,

The Lord Chief Justice, in summing up, reviewed the whole of the evidence in detail, and commented on the fact that the case was much obscured owing to Mr. Owen and Mr. Young having neglected to answer the letters sent to them by the plaintiffs. It was no answer for a man to say that he did not repudiate a claim merely because it was a preposterous one. In conclusion, his Lordship left the following questions to the jury:— (1) Was there an agreement to pay commission? Answer, No. (2) Did the purchase taken place through the plaintiffs' introduction? Answer, No.

Verdict and judgment for defendants accordingly.

Mr. Smyly, Q.C., and Mr. English Harrison were for the plaintiffs; Mr. Finlay, Q.C., and Mr. Hollams for the defendants.

Thompson, Rippon and Co. and Hampton and Sons v. Thomas.

Queen's Bench Division, February 18, 19 and 20, 1896; and Court of Appeal, March 19, 1896.—Before Mr. Baron Pollock and a Special Jury; and before the Master of the Rolls and Lords Justice Lopes and Rigby.

Reported ESTATES GAZETTE, Vol. xlv., pp. 234 and 263.

Alleged cancellation of agency to avoid paying commission.

In this action the sum of £622 10s. was claimed in respect of commission by Messrs. Thompson, Rippon and Co., of Exeter, and Messrs. Hampton and Sons, 1, Cockspur Street, S.W., house and estate agents,

upon the introduction of the purchaser, Madame Las Casas, of the Worth Estate, Tiverton, Devon, to the defendant, Mr. George Thomas, of Tredegar House, Falmouth.

A voluminous correspondence which had taken place between the parties was put in, and Mr. Thompson, partner in the firm of Messrs. Thompson, Rippon and Co., auctioneers and estate agents, of 22, Gandy Street, Exeter, produced his diary and call book, and gave evidence in regard to the letters in his evidence. He said he first heard the estate was for sale on October 2, 1893, when he was instructed by Mr. Thomas to sell the Worth Estate. The commission was to be $1\frac{1}{2}$ per cent. on the sum realised. Defendant told him on October 2 that Madame Las Casas had offered £40,000. Within a few days he sent a short preliminary circular round to several clients, describing the property as a residential estate, but it had been agreed between defendant and himself that the name was to be kept private in the ordinary course. The name, therefore, was not circulated. On October 11 witness communicated with Messrs. Hampton and Sons, stating that his firm had had placed in their hands for sale, privately, a very desirable freehold residential estate, that the price was £45,000, and the property was one, they added, that they would like Messrs. Hampton and Sons to inspect, but they could not go to any expense, although they would be pleased to divide commission on a sale. In Messrs. Thompson, Rippon and Co.'s opinion, it would find a ready sale. He knew that Madame Las Casas before October 2 was seeking a residential estate, her sons having written to his firm on various occasions for particulars of properties which were advertised for sale. On October 21 he attended at the Hotel Metropole, London, and met by appointment a Mr. A. J. Clarke, and placed before him the particulars of the Worth Estate. He also went to Messrs. Hampton and Sons. On January 26, 1894, witness heard that the property had been sold to Madame Las Casas. His firm wrote three letters, stating they would no doubt have sold the property, that defendant had promised the valuations, and they had taken great trouble in the matter; that it was sold through their instrumentality and that of their London agents, and that they accordingly claimed commission. The defendant replied in February, 1893, to the last

letter, asking what the sale had to do with plaintiffs, and stating that, after he had taken the property out of their hands and cancelled the order for sale, he had a right to do as he pleased, especially as they had said the estate was not worth more than £41,000, which ended the matter; and Messrs. Thompson and Co. were mistaken, he wrote, if they thought it was through their instrumentality that the property was sold. To this Messrs. Thompson, Rippon and Co. replied on March 13, saying that the defendant certainly had a right to do as he pleased, but, they alleged, by not allowing them or their London agents to get an increased offer, defendant purposely cancelled their agency to avoid paying commission. It was more than probable they would have obtained a better offer, and they therefore commenced the action.

In cross-examination Mr. Thompson said that he was certain £40,000 was mentioned by Mr. Thomas on the first day, and that £41,000 was not the sum. Witness came to London on Friday, November 6, 1893, and returned on the 9th. On October 3, he advised the employment of London agents, and defendant suggested leaving the matter over. Between that date and the 21st he went to Messrs. Hampton and Sons, and on the latter date he went with the representative of that firm to Worth. When he spoke to Mr. Thomas on the first occasion he told him that either Mr. Robertson or Mr. Peck, of Messrs. Hampton and Sons, would probably come to view, and when Mr. Robertson went to Worth with witness on October 21 defendant knew what firm he represented. The property was mentioned to Madame Las Casas, and he sent a short circular to her, stating also that it would be better for offers to come through Messrs. Hampton and Sons. Some years before he knew Madame Las Casas, as she negotiated for the purchase of Worth when Mr. Thomas first bought it, the auctioneer then selling being in his employ. Witness submitted a firm offer of £41,000, made by Mr. Clarke at an interview with Mr. Thomas on Friday, November 6, and the latter said he would not entertain it. As a matter of fact, at that time he had two offers of £41,000. It was customary to leave such an offer blank in his books, and he did so in this case because he did not believe that sum would be accepted. A verbal offer of £41,000 was certainly made to him at Exeter by Mr. Clarke.

On November 1 Madame Las Casas asked if there was any objection to her communicating with Mr. Thomas direct, and witness said there would not be. His entry in the diary confirmed this. Mr. Thomas agreed that what Madame Las Casas communicated he would write to witness. Defendant continually pressed him to sell the property. He had an interview with one of the sons of Madame Las Casas, who said his elder brother had the matter in hand. He called again, but could not see the elder brother. Mr. Emmanuel Las Casas said that his mother would not give more than £40,000. When witness explained that he was in a position to get £41,000 immediately, Mr. Emmanuel showed a disposition to offer £41,000, but witness said it was not possible that that sum would be accepted, and an offer must be made something above that. The offer of £41,000 was subject to the consent of the trustees. Mr. Thomas, after the offer by the son, suggested leaving the matter over to the spring, but witness said certainly not. If they did not have any further offers from Madame Las Casas then it might be left over till the spring. Mr. Thomas had never wished to withdraw his agency, and witness did not say "Leave it a day or two longer." On November 24 Mr. Thomas instructed him, calling at witness's office, to temporarily withdraw the property till the spring. He would swear he saw Mr. Thomas at his office. He first knew the property was sold some time during January. He wrote to Messrs. Hampton and asked if they could help him to prove their case. Messrs. Hampton wrote to Madame Las Casas, who replied on February 23, declining to say the property was sold through the two agencies. On November 7 he did not receive an enclosure signed by defendant in another letter from Mrs. Thomas, stating that he withdrew the agency. Mr. Thomas never asked for the cancelling of the agency either by word of mouth or in writing. Mr. Thomas also denied various of the defendant's statements put to him.

Mr. Robertson, manager of the estate department of Messrs. Hampton and Sons, Cockspur Street, S.W., said he went to Worth with Mr. Thompson on October 21, and was taken over the property by Mr. and Mrs. Thomas. Mr. Thomas certainly knew he was the representative of Messrs. Hampton and Sons. The terms of commission were discussed, and $1\frac{1}{2}$ per cent. was fixed,

220 COMPENDIUM OF COMMISSION CASES.

and they were to act as sole and joint agents, and all matters were to be left to them. It was specially mentioned that if Mr. Thomas should receive negotiations direct, he should inform them. Witness did not remember that the name of Las Casas was mentioned, but the offer of £40,000 was referred to. It was explained to Mrs. Thomas what had taken place, so that there should be no misunderstanding. Immediately after this, Messrs. Hampton and Sons prepared particulars and introduced the property to 23 persons, advertising in two London papers several times. Amongst the customers was Madame Las Casas. On October 25 she offered £40,000, and his firm suggested £42,000, writing also to Mr. Thomas recommending him to see her. They continued to introduce the property, and advertised it in their register, until Mr. Thompson wrote them to withdraw it. He considered that the property was sold through their instrumentality. Mrs. Thomas did not say an offer of £41,000 had been made.

For the defence, Mr. George Thomas, the defendant, said he bought the property in 1886 for £35,000, and laid out £3,000 in improving the estate. On the day he saw Mr. Thompson he was entertaining a shooting party, and he told him he had an offer of £41,000. Mr. Thompson said he had a client in London who would give thousands of pounds more for it if he wanted to sell it. Witness and his wife consented to Mr. Thompson trying to sell it. He had never mentioned Madame Las Casas' name in any of the negotiations. At the house on October 21 he signed the agreement for commission. Mr. Thompson did not mention Madame Las Casas to him or say that the firm would go to her as a probable buyer. Witness told him that an offer of £41,000 had been made. In the latter part of October he had a letter from Mr. Las Casas, with reference to Messrs. Hampton and Sons. On November 3 he went to Messrs. Thompson and Co.'s offices with Mrs. Thomas, concerning the definite offer of £41,000, the agent fearing he could not get a better price. When he saw he could get no more than that, witness said he told him he would take it out of his hands. Mr. Thompson said he should like to leave it a day or two longer to see what offer he could get. Witness said he should like him to have his consent to withdrawal in writing, but Mr. Thompson said it was not necessary, and if he liked to withdraw it he could. In the letter of Novem-

ber 7 he enclosed a memorandum, signed by himself, cancelling the agency in the words "Don't try any more; I now cancel the agency." Mr. Thompson came on the same day, and witness told him in the dining room that the shooting had been put off and he had cancelled the agreement. He said he was very sorry, and could do no better for him, and witness again requested him to put his consent to withdrawal in black and white, which he refused. He said nothing about offering the property in the spring. Witness then went out shooting, and Mr. Thompson did not leave till late. Witness never went to the office on the 9th, and had only been there twice in his life—once in 1887, when he returned from Africa, and on November 3, 1893. Witness had no cause to write after Mr. Thompson knew the property was taken out of his hands. About December 29 he saw Madame Las Casas, and the contract was entered into for £41,500.

In the course of cross-examination the witness was asked: Do you think it was fair to get rid of the agreement for the purpose of saving the commission?—If they could not make £45,000 it was my duty to take it out of their hands. The commission made no difference to me. They never found a client for me. Madame Las Casas was no client of theirs, though I did not tell them of her. I never wrote when I tried to sell, and never informed Mr. Thompson when I had closed with the offer. Madame Las Casas readily agreed not to mention the sale, my object being to save the pheasants from poachers. Mrs. Las Casas' solicitor wrote that witness could accept his cheque in preference to that of Mrs. Las Casas so as not to excite remark; the only object was to save the birds. He wanted to keep it quiet until January.

Mr. Watkins, solicitor in this action for defendant, said he saw the memorandum in March, 1894, together with several other letters, at Worth, previous to Mr. Thomas leaving the house. He disclosed it in the third affidavit. He had no copies of letters from Mr. Thomas to Madame Las Casas. He had not the correspondence referred to in the bill of costs.

Mrs. Thomas was next called, and said she told Mr. Thompson an offer had been made of £41,000, and at the second interview Madame Las Casas was mentioned. At Mr. Thompson's office, her husband said they could do better than £41,000 themselves, and he would with-

222 COMPENDIUM OF COMMISSION CASES.

draw the property from their hands. Mr. Thompson said he should like to have it a little longer, and Mr. Thomas said he should like the withdrawal in black and white. Mr. Thompson said that was not necessary, as her husband could withdraw it if he pleased. She denied Mr. Thompson's version. With regard to the enclosure, she wrote it, and her husband signed it. Witness put it in the envelope herself and gave it to the postman. She confirmed her husband's testimony as to November 8, when Mr. Thompson came to the house, before he called at the office.

Cross-examined: She admitted that up to October 31 she was still supplying Mr. Thompson with information about the lands in hand, the lawns, etc. Mr. Lewis Las Casas called, complaining of a letter from Messrs. Hampton and Sons, and her husband said he could not do anything more while it was in the agents' hands. Madame Las Casas had written to Mr. Thomas six months before. To her mind, her husband's statement showed that Mr. Thompson's London client was a myth. Mr. Las Casas was annoyed at the property being in the market, and said that his mother was prepared to buy. Mr. Thompson wrote that Madame Las Casas might not offer more than £41,000, but she was not surprised that they knew of the lady. Mr. Thomas did not go to Mr. Thompson's office on November 24; that day was her birthday, and she remembered her husband being about the house all day.

After hearing some other evidence, the learned judge, in summing up, said the case laid in a narrow compass. The contract was very simple. It was dated October 1, 1893, and addressed to plaintiffs as follows: "In accordance with our conversation to-day, I agree to pay you, in the event of the Worth estate being sold, commission at the rate of $1\frac{1}{2}$ per cent. on the agreed amount of the purchase money. No commission unless a sale takes place. Asking a price of £45,000, including timber." The first point they must decide was, Did the plaintiffs by their exertions bring about the sale of the estate? If the contract existed at the time of the exertions which led to the sale to Madame Las Casas, then the fact of defendant carrying out the sale had nothing to do with it. Also, did the plaintiffs put the estate in the market and keep up such a correspondence as to induce some person to buy it, and did the ultimate purchase come under that? Was the introduction to

defendant by himself or entirely independent? The cancelling of the agreement would be an irrevocable revocation; where there was a revocation there must be two sides to a bargain; and was this contract revoked with the consent of the plaintiffs? If not, then the plaintiffs by their exertions did carry out the sale, and although the defendant may have determined the agency, plaintiffs were entitled to recover.

The jury found a verdict of £622 10s. for the plaintiffs, and said they found that the agreement was not cancelled with the consent or request of the plaintiffs.

His Lordship entered judgment accordingly, with costs, and refused to stay execution.

Subsequently, in the Court of Appeal, this judgment was confirmed. The Master of the Rolls, after going fully into the facts, observed that he thought that the jury might have fairly come to the conclusion that the renewal of the negotiations was the result of Mr. Thompson calling on the Las Casas; that the estate was still open and could be negotiated for with Mr. Thomas, who might, instead of the £45,000 which he first intended, sell it for less. It was that which made Mr. Las Casas come on the scene again, and he persuaded Mr. Thomas to take £41,500. It was an ordinary case, and he considered that it was by the re-introduction of this property to the attention of the Las Casas that the sale actually took place, and that was sufficient to entitle plaintiffs to the commission.

Lord Justice Lopes was of the same opinion, although he never had much sympathy with commission agents who claimed large sums for doing little work. With regard to this, he was unable to see that there was not reason for the jury to act as they had done. The great question the jury had to consider was whether or not the plaintiffs did bring about the sale of the estate. Having regard to the letters and other matters, he considered that the sale of the property was effected by the plaintiffs bringing it again to the notice of the Las Casas. Therefore, he thought the appeal should be dismissed.

Lord Justice Rigby concurred. He said nothing of what would have been his own conclusion had he been a member of the jury, but whether there was any evidence which reasonable men could consider in giving a verdict, he thought the correspondence showed that it was not unreasonable to come to the conclusion that,

by means of the exertions of the agents, the purchaser was induced to increase his bid.

Counsel for the plaintiffs: Mr. Carson, Q.C., and Mr. Gregson Ellis; counsel for the defendant: Mr. Bucknill, Q.C., and Mr. Garland.

Crouch, Strevens and Co. v. Reynolds.

Brighton County Court, February 8 and 22, 1895.—Before his Honour Judge Martineau.

Reported *ESTATES GAZETTE*, Vol. xlv., p. 256.

Sale falling through by default of vendor—Commission recoverable.

Messrs. Crouch, Strevens and Co., auctioneers and house and estate agents, Brighton, sued Mrs. Mary Ann Reynolds, 109, Marine Parade, Brighton, to recover £52 10s. as commission earned upon "the introduction and arrangement of the sale of No. 1, St. Catherine's Terrace, Hove, to Mr. J. W. Wells, for £2,100, according to the defendant's instructions."

It appeared that the defendant was a married lady of very considerable private property. On May 5, 1894, she wrote plaintiffs: "I have a house, 1, St. Catherine's Terrace, I wish to sell privately. Should you meet with a purchaser I should be glad; £3,000 the price, empty in June." Plaintiffs agreed to do their best to find a purchaser. A voluminous correspondence between the parties showed that ultimately defendant authorised plaintiffs to close with Mr. J. W. Wells for the purchase of the house for £2,100. They did so, but subsequently defendant wrote saying she should decline to proceed, on the ground that Mr. Wells' mode of procedure had been most unsatisfactory and irregular. In the course of further correspondence, defendant's London solicitor, in a letter to plaintiffs, said: "Mrs. Reynolds tells me she has arranged with you for the sale of the house for £2,100, and has forwarded me the deeds." Afterwards defendant raised a difficulty about the fixtures, and put their value at £20, which Mr. Wells refused to pay, but eventually plaintiffs arranged that this should be paid. Finally defendant's solicitor wrote that all negotiations were at an end. Plaintiffs then claimed £52 10s. commission.

Mr. William Holford Strevens was called in support of counsel's statement. He said he only had one interview with the defendant—viz., after Mr. Wells had offered £2,100. Defendant asked him to try and get

£50 more, but Mr. Wells declined to give anything beyond the £2,100. When the difficulty about the fixtures, which consisted of curtain poles, blinds, and gas fittings, was raised by the defendant, Mr. Wells declined to pay the £20, and witness offered to take it out of his commission rather than the sale should fail. He was really entitled to £2 10s. more commission than he had claimed, the scale being 5 per cent. on the first hundred and 2½ on the remainder of the amount.

In cross-examination, witness said he proposed that defendant should deduct the £20 for the fixtures from his commission. He was her agent, but did not inform her at the time of Mr. Wells' refusal to pay for the fixtures and his contention that they were included in the £2,100.

Counsel for the defendant contended that there never was a concluded contract to purchase the house for £2,100, because Mr. Wells always claimed that the fittings or fixtures should be included. Plaintiffs were entitled to commission if they succeeded in getting a willing purchaser, and if the sale only went off through the default or neglect of the principal. This was not the case here. The sale would have gone off all right if the plaintiffs' statement had been correct that they had succeeded in making Mr. Wells pay the additional £20 for the fixtures; instead of that they were going to pay the £20 themselves.

His Honour said he could not get over this. In substance defendant was to get £2,100 and £20 for fixtures, all she asked, and it did look as if plaintiffs did all that could be expected of them.

His Honour's attention was called to "*Rossiter v. Miller*" and "*Grogan v. Smith*."

His Honour said that the defendant was the owner of 1, St. Catherine's Terrace, and as the tenancy of that house expired in June last, she wrote in May, asking the plaintiff to find a purchaser for the house for £3,000. Plaintiff agreed to try to do so, and after some time he found a Mr. Wells willing to give £2,100 for the house. Defendant, with considerable reluctance perhaps, agreed to accept this offer. No instructions, it was clear, had been given to the plaintiff except as to price. He was not told anything about the fixtures or fittings; he was not told the purchaser would have to pay extra for these. Mr. Wells in his offer made three conditions, every one of which appeared to be reasonable, and if that offer had

been accepted Mr. Wells would have been bound by it. Defendant, however, afterwards asked to be paid £20 extra for certain fixtures and fittings, and Mr. Wells refused to pay this sum. The plaintiff then expressed his willingness to allow this £20 to be deducted from his commission, but defendant was not satisfied with this, and finally broke off negotiations. In his Honour's opinion the plaintiff was not prevented by what had occurred from recovering. He thought plaintiff earned his commission when he got Mr. Wells' letter agreeing to give £2,100 for the house. Mr. Wells offered everything plaintiff was instructed to get, and it was entirely defendant's fault that the purchase was not completed. He therefore gave judgment for plaintiff for the amount claimed, with costs.

Counsel for the plaintiffs : Mr. Marshall Hall ; counsel for the defendant : Mr. Boxall.

Field and Sons v. The Electrical Metric Syndicate.

Southwark County Court, March 7, 1896.—Before his Honour Judge Bristow.

Reported *ESTATES GAZETTE*, Vol. xlv., p. 298.

A disputed retainer.

Messrs. Field and Sons, 54, Borough High Street, and 52, Chancery Lane, were here suing for commission for letting No. 67, Southwark Street, S.E., at £170 per year.

Mr. James Frederick Field, F.S.I., said he received a letter from the Electrical Metric Syndicate on July 12, 1894, stating that they would be glad if one of his representatives would call at the address, 67, Southwark Street, with reference to the letting of the place. He sent his son to take particulars, and afterwards sent a clerk with the letter in his hand to ascertain the position where notice boards should be erected. The boards were specially written and put up, and the firm entered the property on the register. Subsequently he was informed that the premises were let, and the tenants wrote asking them to take down the boards. Witness wrote three letters to the company, and in answer to the third, on November 6, the syndicate repudiated the contract, stating that the premises were let by the Electrical Manufacturing Company. On the boards was painted "Enquire within," and certainly this was exceptional. In cross-examination, witness said the clerk on the second visit to the premises returned and said the

syndicate desired the words "Enquire within" added, as well as "Electrical power supplied." The clerk told the gentleman he saw that in that case the firm would have their trouble as agents for nothing. The manager replied, "That does not matter; you will be sole agents." Thereupon witness wrote to the defendants that the firm would put the words they wished on the board upon the understanding that the letting would be in the firm's hands. He had no answer to that, and the board was subsequently fixed.

Mr. Richard Thomas Meikle, clerk to the plaintiff firm, said he went to the premises and asked to see the manager of the Electrical Metric Syndicate, Limited, and showed him the letter which the syndicate had written. The gentleman said he would like the words added which Mr. Field had mentioned, and declared that in any case the letting should be completed through Messrs. Field's agency. He (witness) posted Mr. Field's letter of July 16, agreeing to the addition of the words on the understanding that the letting should be completed through their agency; that letter was not returned through the post, and he should have seen it if it had been. Witness also called at No. 33, Old Broad Street, E.C., the registered address of the syndicate, and a gentleman he saw put £170 upon a card witness handed him, as the rent that the tenants were paying. This card he gave to Mr. Field.

Mr. Charles Field, son of Mr. J. F. Field, said he went on the first occasion to the premises and asked to see the manager, producing the letter on which he made a note. Witness measured each floor, with a view to placing the property on their register. They were manufacturing premises.

Mr. J. F. Field, re-called, said he had no recollection of the card. He did not know it was in the writing of the defendants, or he should have taken jealous care of it. He thought it was one of their own cards, and probably threw it into the waste paper basket. In the press of heavy business they did not always think of these details. He was not in the habit of suing for commission in small cases like this, but he thought the circumstances in the present case were such as compelled him to bring it into Court. The time lost in attending the Court was so valuable that he would often lose commission than fight; he ought to be in Leeds at that moment. He was not aware that there

228 COMPENDIUM OF COMMISSION CASES.

were two companies at the same place trading under slightly different names. He might state that the commission charged was at the rate of five per cent. on one year's rent when the term was three years; and $7\frac{1}{2}$ per cent. on a longer term.

For the defence, the representative of the syndicate said they admitted the amount was fair and reasonable, but disputed that they were liable. He said the premises were let by the Waterhouse Electrical Manufacturing Company, which was distinct from the defendant company.

His Honour: Why did you send this letter, asking Messrs. Field and Sons to send a representative? the signature of that is identical beyond all question with the letter put in.

Mr. W. H. Robson, secretary to the Waterhouse Electrical Metric Syndicate, said he had not authorised any person to write the first letter, which seemed to be written by the manager of the Waterhouse Manufacturing Company. Mr. Waterhouse had the custody of the stamp, and no one had authority except himself to apply it to communications.

Cross-examined: Mr. Waterhouse was at present abroad, but he was a promoter of the Metric Syndicate. Witness was now receiver and manager of the Manufacturing Company—which was in difficulties—for the debenture holders. He wrote to Messrs. Field on December 27, asking them to furnish a statement on account, because he (as manager of the Manufacturing Company) had reason to believe there were sufficient assets to pay creditors.

His Honour: Isn't it a curious thing that the signatures should be the same?

Witness: They are not the same for the two companies. He denied that anyone had authority to write for the syndicate.

His Honour gave a verdict for plaintiffs for the amount claimed, with costs.

Wright v. Hall.

Queen's Bench Division, March 23, 1896.—Before Mr. Justice Wright and Mr. Justice Cave.

Reported *ESTATES GAZETTE*, Vol. xlv., p. 396.

Commission not earned, but remuneration recovered on a quantum meruit.

This was an appeal by the plaintiff from a decision of the County Court Judge of Guildford in favour of

the defendant, Mr. Ernest Hall, of Queen Street, Portsea. The case had been tried twice. The plaintiff claimed £66 2s. 6d. for introducing a purchaser for an estate known as Bracken Hill, Woking. On the first occasion the County Court Judge, who heard the case himself, decided in favour of the defendant. Justices Mathew and Charles directed a new trial, and the matter came before the same County Court Judge and a jury. The latter found that the plaintiff ought to have a share of the commission, but the answers to the questions which the Judge had put to them were construed by his Honour as being a verdict for the defendant. The plaintiff now applied a second time for a new trial, or, alternatively, that judgment should be entered for him.

Mr. Justice Cave said he was of opinion, however unfortunate it might be, that the case must go back for a new trial. The real question in dispute hardly seemed to have been left to the jury. Plaintiff had introduced a purchaser on the agreement to share with the auctioneer the commission. When, however, the purchaser came to sign the agreement, the complication arose that he refused to pay a certain amount of commission which he should pay to the auctioneer. The consequence of this was that the plaintiff did not perform his agreement to the letter. The defendant chose to take the purchaser on the terms he made, and his principal by telegram assented to that being done. Thus he got a certain amount of advantage from the services of the plaintiff, but not exactly the services he intended, because the purchaser would not pay $1\frac{1}{2}$ per cent. commission, which was to go to the auctioneer. But he did get a certain advantage; he did make use of the services of the plaintiff. Under these circumstances, it seemed to the judges of the Divisional Court (Justices Mathew and Charles) that plaintiff was entitled to be paid on a *quantum meruit*, and that it would be for the jury to say what was the amount. Somehow or other that appeared to have been misunderstood by the County Court Judge, who seemed to think that as the contract was not carried out in every particular by the purchaser, therefore plaintiff was entitled to get nothing. That was repugnant to the common-sense view of the matter which the jury took, and it was quite obvious that they thought the plaintiff ought to have something, in accordance with the view which the judges of the Divisional Court expressed, and

which he (Mr. Justice Cave) now took. The County Court Judge refused to leave it to the jury in that form, and put to them certain questions, entering a verdict for the defendant. The question that should have been left to the jury was how much plaintiff ought to have for services rendered. It was not so left to the jury, and he saw no way open but to send this case for a new trial, and he regretted that the parties should be put to the expense. It was impossible for him to say how much plaintiff was entitled to; it was for the jury to decide. The plaintiff having succeeded in this appeal would have the costs of the appeal.

Mr. Justice Wright was of the same opinion. There was a special covenant that the purchaser should be found and commission paid on a certain condition, which was embodied in the condition of sale. That was departed from, without, so far as it appeared at present, the consent of the plaintiff, but nevertheless, the defendant had had the plaintiff's services.

At the third hearing in the Guildford County Court a verdict and judgment were given for the plaintiff for £25 and costs.

Marshall Parkes v. Hill.

Westminster County Court, April 2, 1895.—Before his Honour Judge Lumley Smith.

Reported ESTATES GAZETTE, Vol. xlv., p. 457.

Failure to complete—Purchase-money not forthcoming—Commission not recoverable.

The plaintiffs in this case were a firm of house agents carrying on business at Chancery Lane, and they sued the defendant to recover the sum of £35 as commission for services rendered in connection with the letting of a house at Montagu Place.

It appeared from the opening statement of plaintiffs' counsel that negotiations commenced as far back as 1893, when the defendant called at the plaintiffs' offices and instructed them to find a purchaser for the house in question. The matter was duly proceeded with, but nothing definite was done until January of the present year, when a Mrs. McFarlane was introduced to the defendant, and was given an order to view the premises. The price asked by the defendant was £1,000, and after making a general survey the proposed purchaser offered £700. This sum, however, was declined by the defendant, but upon plaintiff getting it increased to £750,

the defendant agreed to sell for that sum, "cash down." When the day of completion arrived, however, the money was not forthcoming, and the matter fell through. The plaintiffs claimed that they had done everything they undertook to do, and had actually brought about the relation of vendor and purchaser, therefore they now sought to recover payment of their commission.

Mr. George Warden, a partner in the plaintiffs' firm, was called, and corroborated the opening statement of counsel as to the defendant having given the usual instructions and agreed to pay the commission if a purchaser was found. For the defence it was admitted that the plaintiffs were instructed to sell the house, and had they been successful in so doing they would have been duly paid their commission; but, inasmuch as the proposed purchaser failed to complete the purchase, the whole matter had come to an end, and no commission had been earned.

In giving judgment, his Honour said he had no doubt but what the plaintiffs had done a great deal of work in connection with this matter, but the question was whether they had brought about the relation of vendor and purchaser in such a way as to entitle them to be paid commission. It was admitted on both sides that the plaintiffs did introduce a lady, who expressed her willingness to purchase, but when the day came for completion she was not prepared with the money, and consequently the matter fell through. He (the judge) did not think the plaintiffs could recover in this case, because, as a matter of fact, no sale had taken place. No doubt the whole thing had fallen through in consequence of the failure of the plaintiffs' client to procure the money to complete the matter; but, inasmuch as no sale had been brought about, there must be judgment for the defendant, with costs.

Greatorox and Co. and Walton and Lee v. Shackles.

Marylebone County Court, May 6 and 10, 1895.—Before his Honour Judge Stonor.

Reported *ESTATES GAZETTE*, Vol. xlv., p. 624.

More than one agent concerned—Interpleader issue.

In this case commission for two amounts of £25 12s. 6d. was claimed in respect of the sale of No. 109, Inverness Terrace, Bayswater.

232 COMPENDIUM OF COMMISSION CASES.

In the original action Messrs. Greatorex and Co. were the plaintiffs, but upon the application of the defendant an interpleader summons was issued joining Messrs. Walton and Lee, who also claimed £25 for commission, which the defendant was willing to pay, and had in fact paid £25 into court.

Messrs. Greatorex's counsel objected to Messrs. Walton and Lee taking any part in the case.

His Honour, however, thought it would be competent for him, if necessary, to give judgment for or against any of the parties—either one or both. He therefore decided that the case should be heard as an interpleader.

Messrs. Walton and Lee's counsel submitted that his clients were not in the position of conflicting or opposing parties, because defendant had admitted in letters that the purchaser was introduced by Messrs. Walton and Lee (of 33, Mount Street, Grosvenor Square, W.). In fact, Messrs. Walton and Lee offered the property for auction, which proved abortive, and three months after Messrs. Thurgood and Martin (of 27, Chancery Lane, W.C.) wrote asking if the property was still in their hands. Messrs. Walton and Lee replied that it was. During the following four months negotiations passed, and the sale finally took place to the same person whom Messrs. Greatorex and Co. introduced early in 1893. Mr. Pollock said it was quite clear that his clients must be paid. Defendant had thanked them for their trouble.

It was urged for the defence that the defendant should not pay twice over.

His Honour said that that was quite possible. He held that Messrs. Walton and Lee need not proceed, and accordingly discharged them from the suit.

Messrs. Greatorex's counsel said that the original plaintiffs were Messrs. Greatorex and Co., estate agents, of 11, Stanhope Terrace, W., and the defendant, a widow lady residing at Wisborough, Sussex. The claim was for £25 12s. 6d. as commission earned on the introduction of the purchaser of the house, No. 109, Inverness Terrace, Bayswater, and stables. In November, 1893, the house was placed in the plaintiffs' hands, and within a few days they introduced the matter to Mrs. Ricketts, who obtained a card to view, and saw the place more than once. On February 20, Mrs. Ricketts offered £1,550 for the house and fixtures, after some negotiation. Defendant insisted that the fixtures should be extra. As the fixtures were estimated at only about

£20, plaintiffs suggested that they would reduce their amount of commission to £12 10s. in order to bring about a sale. In spite of the close proximity of a sale, the bargain did not come off, and Mrs. Ricketts becoming somewhat angry, and said she would have nothing more to do with defendant. On March 24 defendant wrote a letter stating that the matter was now in Messrs. Walton and Lee's hands, and plaintiffs need have no further negotiations with intending purchasers. All boards must be taken down except those of Messrs. Towers, Ellis and Co. Plaintiffs at once wrote a letter, saying that they had introduced the house to the notice of 25 clients, and if any one of them purchased, either at the sale or afterwards, they would still claim their commission. The house was put up for sale on May 8, but not sold. On May 23 defendant called on the plaintiff firm and saw Mr. Andre, instructing the firm to place the property upon the books and put up a notice board, stating also that the place had been practically advertised all over London, and was in the hands of several firms. On May 24 plaintiffs gave several persons orders to view. It ultimately transpired that the house was sold after the auction for £1,350, to Mrs. Ricketts, for whom Messrs. Thurgood and Martin were acting, and who kept back the name until the contract was signed.

Mr. J. E. A. Grestorex, Mr. Wilfrid Andre, and Mr. Alfred H. Armitage bore out counsel's remarks, and Mrs. Shackles having given evidence,

His Honour gave judgment for the plaintiffs for the amount claimed and costs.

Counsel for Messrs. Grestorex and Co.: Mr. Cagney; counsel for Messrs. Walton and Lee: Mr. E. Pollock; counsel for defendant: Mr. Moyse.

Norton, Son and Lalonde v. Thomas.

Somerset Assizes, June 8, 1896.—Before Mr. Justice Vaughan Williams.

Reported ESTATES GAZETTE, Vol. xlv., p. 810.

A letting and a subsequent sale—Alleged custom—No sufficient proof.

This was a claim by the plaintiffs, estate agents, at Weston-super-Mare, against the defendant, Mrs. Thomas, a widow, to recover commission upon the letting of her business premises, 32, High Street, Weston-super-Mare, for the sale of the stock-in-trade and goodwill of the

234 COMPENDIUM OF COMMISSION CASES.

business, and also for the subsequent sale of the freehold itself.

It was stated for the plaintiffs that their first witness, Mr. Samuel Norton, who mainly carried on the business with Mrs. Thomas, was dead, and the diary containing memoranda of the transactions with her had been lost. A mass of correspondence had, however, been found, consisting of copies and originals, and it was read. On May 16, 1887, Mrs. Thomas sent for Mr. S. Norton and gave him certain instructions, and he returned direct to his office and dictated the instructions he had received to his partner, Mr. Lalonde, and they were to the following effect:—That Mr. Norton was to find a tenant of the premises, 32, High Street, Weston-super-Mare, and a purchaser of the stock-in-trade. The plaintiffs did not claim anything for commission on the letting of the house or valuation of the stock, because they did not value it at all; therefore, when defendant said they paid £83 for the valuation of the stock, their answer was that that sum was paid to an expert valuer who performed that service. The plaintiffs were instructed to find a tenant. Mr. Curtis became lessee of the premises, and purchaser of the stock without their introduction, and Mrs. Thomas might have dealt with him direct, but she advised him to go to Mr. Norton as her agent, and thenceforward the whole of the business connected with the sale of the stock and the transfer and sale of the premises was conducted by Mr. Norton's firm, as the agents of Mrs. Thomas. Plaintiffs' contention was that as the result of negotiations carried on by them between July 16 and October 10, an option clause was inserted in the lease of the premises, which the lessee had power to exercise within seven years, and that he did exercise that power, and became the purchaser of the premises for £7,500 in September, 1894, and on that sale they claimed £162 commission, asserting that Mrs. Thomas was told that if Curtis became the purchaser of the freehold she would have to pay commission. They had conducted the whole affair from first to last as Mrs. Thomas's agents, but had not received a penny. Their commission did not become payable till September, 1894, and plaintiffs, feeling confident the freehold would be sold, had refrained from making any claim for the letting and sale of the stock, and such claim was now barred by the statute. Plaintiffs admitted that there was no specific

contract to pay so much per cent. commission on the sale of the freehold, but they relied on the custom in such transactions.

The learned Judge said plaintiffs must prove a specific bargain.

Mr. Weatherly then at considerable length read the correspondence, with a view of showing continuous agency of plaintiffs and agreement with Mrs. Thomas as to the sale of the freehold.

His Lordship said plaintiffs had failed to prove a special agreement, and Mr. Weatherly proceeded to call evidence as to custom.

Mr. Lalonde, one of the plaintiffs, deposed that it was the custom when a person settled the terms of the letting of a property, and the freehold was subsequently purchased by the lessee under an option reserved by the terms of letting, for the agent to receive a commission on the letting, and afterwards to receive $2\frac{1}{2}$ per cent. commission on the sale of the freehold, less the amount he had previously received as commission on the letting. In cross-examination, witness admitted that the firm had received £20 from the executor of the late Felix Thomas for valuation, stock-in-trade and personal effects in probate, and that of £83 19s. paid to Mr. Parsons, an expert, for valuing the stock which Curtis bought, they had received £31 19s.

Mr. A. H. Wansbrough, Weston-super-Mare, who had had 30 years' experience as a house and estate agent, confirmed Mr. Lalonde's statement as to the custom.

Mr. Alexander H. Daniel (Alexander Daniel and Co.), with 25 years' experience as house and estate agent, said he had not met with a case similar to that in dispute.

Mr. Charles Reed, managing clerk to Messrs. Smith and Son, solicitors, Weston-super-Mare, deposed to hearing Mrs. Thomas told that £500 would pay Mr. Norton's commission and the other expenses of the sale, but admitted that Mr. Edward Thomas and Mrs. Thomas, who were present, both repudiated this notion.

Mr. E. Thomas, of Gravesend, deposed that he had an interview with Mr. Norton, and asked him what his position was with regard to the disposal of his brother's affairs, and he replied that his remuneration would be commission on the valuation, part of which he would have to share with the experts.

236 COMPENDIUM OF COMMISSION CASES.

His Honour decided there was no specific agreement as to the payment of commission in the event of the purchaser exercising the option of purchasing the freehold, and said the questions he should ask the jury would be—Are you satisfied that there has been proved by the witnesses a custom applicable to this case under which $2\frac{1}{2}$ per cent. commission becomes payable on the exercise of the option? Were the terms as to option of purchase negotiated by Mr. Norton in the interest of Mrs. Thomas, and if so, were such terms introduced by Mr. Curtis in his interest? And did Mr. Norton agree to accept the commission, which in fact he received, in satisfaction of his services to Mrs. Thomas in respect of the whole transactions, or of any, and what limited part thereof?

The jury found that no custom had been proved; that Mr. Norton negotiated to a certain point, but not finally; and that he negotiated in the interest of Mr. Curtis; and that Mr. Norton having ruled off his book he concluded his agency and did not expect any further sum from Mrs. Thomas.

The learned Judge: That is a verdict for the defendant.

Judgment was given accordingly.

Counsel for the plaintiffs: Mr. F. E. Weatherly;
counsel for the defendant: Mr. H. E. Duke.

Strevens and Co. and another v. Henderson.

Lord Mayor's Court, July 12, 1895.—Before the Common Serjeant and a Jury.

Reported ESTATES GAZETTE, Vol. xlvii., p. 88.

Complete chain of agents—Commission recoverable.

This was an action by Messrs. Strevens and Co., auctioneers and surveyors, of 246, Camberwell Road, and Mr. A. T. Wellings, house agent, of Earlsfield, against Mr. H. A. Henderson, auctioneer and surveyor, of 7, Finsbury Pavement, to recover £100 on an agreement for a share of commission on the sale of certain ground rents at Kensington.

It appeared that certain ground rents, amounting to £1,500 a year, in Kensington High Road, had been placed by the owner (Mr. Worley) in the hands of Mr. Wellings for sale. Wellings introduced the matter to Messrs. Strevens, with whom he was in the habit of doing business. The two endeavoured to find

a purchaser, and communicated with the defendant (through a Mr. Robb) with regard to the matter. The defendant introduced a firm of solicitors, who had a client to whom the ground rents were ultimately sold for £37,500, and he (defendant) received from the vendor a commission of £250 upon the transaction. The plaintiffs now alleged that there had been an agreement between the plaintiffs and the defendant that they (plaintiffs) should receive two-fifths of the commission for the introduction of the business, and that out of the remaining three-fifths the defendant should pay whatever commission was due to Mr. Robb.

The defendant denied that any such arrangement had been entered into, and said that he had merely applied to the plaintiffs for an order to view the property, and to be put into communication with the vendor. The plaintiffs never gave an order to view, and did not disclose the name of the vendor. In fact, they had done nothing except to try and get an agreement for a share of the commission. Being unable to get any information from the plaintiffs, he put himself into communication with the owner, and introduced the name of the firm of solicitors acting for the vendee. The plaintiffs had taken no part in the matter, and was therefore not entitled to any commission.

The jury found for the plaintiffs for £100.

Counsel for the plaintiffs: Mr. Witt, Q.C., and Mr. Lynden Bell; counsel for the defendant: Mr. Lewis Glyn and Mr. Howes.

Nicholas v. Thompson.

Marylebone County Court, July 22, 1895.—Before his Honour Judge Stonor.

Reported ESTATES GAZETTE, Vol. xvi., p. 125.

Introduction of purchaser—Subsequent purchase by him of residue of estate—Commission recoverable.

The plaintiff in this case is a house agent and auctioneer, carrying on business at Reading and at 60, Pall Mall, S.W., and sued the defendant to recover the sum of £30, balance of account in respect of commission on the sale of a property known as the Chasenhill Estate, near Reading.

The evidence called on behalf of the plaintiff's case went to prove that a communication was received from the defendant, requesting that the property in question should be included in the plaintiff's catalogue of pro-

perties for sale, and this was in due course done. Shortly afterwards a Mr. Kemp called at the plaintiff's office, and the property in question, which was on the bank of the Thames, was introduced to his notice, with the result that he purchased a portion of the estate for £3,000. The plaintiff was duly paid his commission in respect of that transaction, but some time afterwards he discovered that Mr. Kemp had purchased the remainder of the estate from the defendant for a sum of £1,200, and it was in respect of the second sale that he now sought to recover the sum of £30, being $2\frac{1}{2}$ per cent. commission on that amount.

The defence was that the second sale was brought about by a solicitor's clerk named Bray, and that he had been paid commission for his services in the matter. It was admitted, however, that a sum of £10 had also been paid to the plaintiff in respect of the second sale.

Mr. Kemp was then called on behalf of the plaintiff's case, and said he was the purchaser of the estate in question. He would have had no knowledge of the property had it not been for the introduction by the plaintiff, and it was his opinion that the plaintiff was the proper person entitled to commission.

In giving judgment his Honour said it was perfectly clear that the plaintiff was the person who first introduced Mr. Kemp as a purchaser, and the question now was as to whether or not he was entitled to be paid commission on the second purchase. He (the Judge) was perfectly satisfied that having first introduced a purchaser for one portion of the estate, he was entitled to commission if that same client purchased a further portion of it. Judgment, therefore, would be for the plaintiff, for the amount claimed with costs.

Harris v. Evans.

Westminster County Court, July 31, 1896.—Before his Honour Judge Lumley Smith.

Reported *ESTATES GAZETTE*, Vol. xlv., p. 194.

Two firms concerned—Commission not payable to first introducer under special circumstances.

The plaintiff in this case is a house agent and auctioneer carrying on business at Gower Street, and he sought to recover the sum of £9 7s. 6d., being commission at the rate of $7\frac{1}{2}$ per cent. on the first year's rental of a house in Gower Street, which, he contended,

was let through his instrumentality to a tenant named Ingham. Mr. Harris was called, and said that he had received instructions from the defendant to find a tenant for the premises in question, and among others to whom he introduced the matter was a Mr. Ingham. At that time, however, it was thought that the premises had been disposed of, and the matter was allowed to drop for several weeks, but subsequently Mr. Ingham again called, and the matter was renewed. At that time the key of the premises was in the hands of Messrs. Stevens, another firm of agents, and consequently witness had to send Ingham over to them. As a result of what he did, the premises were let, and he (plaintiff) now claimed the usual rate of commission.

Mr. Ingham, the present tenant, was called, and said that in April last he called at the plaintiff's office in reference to the matter, and got particulars from the plaintiff's clerk, but he afterwards called at the office of Messrs. Stevens and got from them the key and an order to view, and this resulted in his becoming tenant of the premises.

For the defence, Mr. Evans was called, and admitted that in the first instance he put the matter in the hands of the plaintiff's firm. Afterwards, however, he went to Messrs. Stevens, another firm of agents, and they succeeded in carrying the matter through, and had been duly paid their commission.

The manager in the employ of Mr. Stevens was called, and proved having supplied Mr. Ingham with an order to view, and a clerk in the same employ deposed to having gone over to the house in company with Mr. Ingham, the proposed tenant, and leaving him there with the defendant.

In giving judgment, his Honour said this was a case of very great hardship upon the plaintiff, as it was quite clear that he had done as much in the matter as Stevens had; In most of these house agency cases it was held to be settled law that the agent who first introduced a tenant was entitled to commission, but he (the Judge) did not think that rule applied to this case, as it was one in which both the landlord and tenant had dabbled with two agents, and both had done something. Then came the question as to whether or not the defendant was liable to pay two agents' commission but he was not prepared to go so far as to say that that was so in

240 COMPENDIUM OF COMMISSION CASES.

this case. It was extremely hard on the plaintiff, but there must be judgment for the defendant. The latter, however, had brought all the trouble upon himself, and therefore no costs would be allowed.

James and Co. v. Ramley.

Westminster County Court, October 7, 1895.—Before his Honour Judge Lumley Smith.

Reported ESTATES GAZETTE, Vol. xlvii., p. 529.

Letting not brought about within reasonable time—Commission not recoverable.

The plaintiff in this case was a house and estate agent, carrying on business at Chancery Lane, and he sued the defendant, who formerly resided at Ladbroke Grove Road, to recover commission at the rate of five per cent. for procuring a tenant for his house and shop.

The plaintiff was called, and said that he had received instructions from the defendant to find a tenant for his premises at Ladbroke Grove Road, and it was agreed that if he succeeded in so doing he should be paid commission at the rate of five per cent. on the purchase money. A number of interviews took place on the subject, and in the meantime he (plaintiff) introduced a client of his named Dean. Some little time afterwards witness discovered that the place had been sold to his client (Dean) without his knowledge, and he thereupon sent in his claim for commission; but the defendant objected to pay, on the ground that the sale was brought about by another firm of agents named Cotton, and that they had been duly paid for their services in the matter.

For the defence Mr. Ramley was called, and admitted the facts so far as the instructions to the plaintiff were concerned, but his contention was that in consequence of the plaintiff failing to find a purchaser within a reasonable time, he placed the matter in the hands of Messrs. Cotton, who subsequently carried through the purchase, and had been duly paid their commission. From first to last he had always been under the impression that the first person to introduce the customer was the firm of Cotton.

The defendant's wife was called, and corroborated her husband as to the impression that Cottons were the people who brought about the purchase by Mr. Dean. When the latter called he brought an order to

view from Messrs. Cotton, but never mentioned the plaintiff's name in the matter.

After hearing other evidence at some length, his Honour gave judgment for defendant.

Millar v. Fryer.

Westminster County Court, October 5, 1895.—Before his Honour Judge Lumley Smith.

Reported ESTATES GAZETTE, Vol. xlvii., p. 641.

Order to view—Whether it brought about letting question of fact.

The plaintiffs were house agents and auctioneers in Bond Street, and they sued the defendant to recover payment of commission on the letting of a house at Michael's Grove, Brompton Road.

It appeared from the opening statement of counsel that the house in question was placed in the hands of the plaintiffs' firm to procure a tenant on the usual terms of five per cent. commission. It was understood at the time that the plaintiffs were to have the sole right of securing a tenant, and acting upon that arrangement they went to considerable trouble and expense in order to find a tenant. The first instructions were given in March, 1894, and shortly afterwards a Mr. Horne came upon the scene and was introduced to the property.

In the result Mr. Horne became the tenant of the defendant's house, but in spite of the fact that he got his first introduction from the plaintiffs, the negotiations were carried through by another firm of agents. The plaintiffs then made a claim for their commission, but the defendant repudiated his liability, on the ground that the business was carried through by another agent, who had been duly paid his commission.

Mr. Smith, manager to the plaintiffs' firm, gave evidence to the effect stated above.

For the defence, Mr. Harris, house agent, of Brompton Road, was called, and said the house in question was put into his hands by Mr. Fryer, and in due course he gave an order to view to Mr. Horne, and subsequently carried through the whole of the negotiations for the letting, and had been paid his commission.

Mr. Horne, the tenant, was next called, and said that, so far as he was concerned, the whole of the negotiations were carried through by Messrs. Harris. In

242 COMPENDIUM OF COMMISSION CASES.

cross-examination, however, he admitted that he got the first order to view from Messrs. Millar.

For the defence, it was submitted that the question in dispute had been recently decided by his Honour in the case of "James v. Ramley," a report of which appeared in the *ESTATES GAZETTE* (and see *ante*).

His Honour said the question which he had to consider was as to whether or not the plaintiffs, by giving the first order to view, had done that which brought about the letting. He did not think, in this case, that they had proved sufficient to establish their right to commission, and therefore judgment would be for the defendant, with costs.

Debenham, Tewson and Co. v. Chambers.

Queen's Bench Division, November 4, 1895.—Before Mr. Justice Grantham.

Reported *ESTATES GAZETTE*, Vol. xlvii., p. 642.

Special agreement with regard to commission—Limit as to time.

This was an action to recover £400 on an agreement.

It appeared that the defendant had on March 25, 1892, made with the plaintiffs, Messrs. Debenham, Tewson, Farmer and Co., and Messrs. Quintin and Son, who acted jointly, an agreement, which provided, *inter alia*, that the plaintiffs were to have the right to sell or let on behalf of the defendant the premises, 121 and 122, Bishopsgate Street Within. In case they found a suitable purchaser or tenant, or in case the defendant decided to build himself, the plaintiffs were to be paid a commission of £400. Another clause of the agreement provided that the defendant must make up his mind within three months either to sell or to build himself, and it was on the effect of this provision that the main question in the action turned. The defendant had not within the three months in question either sold the property or begun to build. He began, however, to build in December, 1892. The plaintiffs' contention was that the defendant by his agreement was bound either to sell through them or decide to build within three months' time, and that, therefore, they were entitled to recover the £400 for their trouble, although within the time named he had done neither. For the defendant it was argued that as the plaintiffs had not procured a suitable purchaser or lessee within the three months

named in the agreement, and as the defendant had not built within that time, they were not entitled to recover the commission.

Mr. Justice Grantham, in giving judgment, said that he had come to the conclusion that the plaintiffs were entitled to succeed. This property required a good deal of manipulation, and the plaintiffs were, according to the defendant, to have all this trouble for nothing. The work they had done required the highest degree of skill, and yet the defendant, according to his own case, had nothing to do but turn round at the end of three months and say he was going to intrust the property to somebody else. It was not likely that the plaintiffs would enter into an agreement of that kind. It was said that because the defendant did not determine to build within three months he was not liable; but, in fact, he was compelled by his agreement to make up his mind within three months. That was part of the contract, and the defendant knew it.

Judgment for the plaintiff, with costs.

Mr. Channell, Q.C., and Mr. A. M. Bremner were for the plaintiffs; and Mr. A. T. Lawrence for the defendant.

Copping and Higgs v. Kennard and others.

Queen's Bench Division, November 28, 1895.—Before Mr. Justice Wright.

Reported *ESTATES GAZETTE*, Vol. xvi., p. 751, and Vol. xvii., p. 224.

Disputed retainer—Authority of solicitor.

Plaintiffs are house and estate agents, carrying on business at 50, Green Street, Park Lane, and sued for commission earned in respect of finding a purchaser for No. 39, Upper Grosvenor Street, W. Defendants are trustees of the late Mr. Coleridge Kennard.

Mr. Crump said there was no contract in writing, but Mr. Parker, of Messrs. Parker, Garrett and Parker, solicitors, St. Michael's Rectory, Cornhill, acting on behalf of the vendor, kept up a correspondence with the plaintiffs, knowing perfectly well they were house and estate agents, whose business it was to sell property on commission, and did not repudiate the authority until after they had found a purchaser.

Mr. William Copping said he was in partnership

with Mr. Higgs as a house and estate agent. On June 25, 1891, he had an interview with Mr. Bernard Parker, stating that he understood he was acting for the executors of the late Mr. Kennard. Witness asked him if the house would be sold and on what terms, and for particulars, as he wished for instructions to sell the house, No. 39, Upper Grosvenor Street. Mr. Parker explained that it was let furnished, and the desire of the executors was to sell, but as it was in the occupation of a lady of title, furnished, there was considerable difficulty in its being viewed. Therefore, witness must not issue bills broadcast in the ordinary way, as the lady only allowed a view by written application made by himself. He had to know who the proposed purchaser was, and at what time he would make inspection, and he would then write to the lady and get her permission. The lease was 68 years, ground rent £246, and price asked £45,000. Witness told Mr. Parker that Mr. Coombes, of Coombes' brewery, would very likely purchase it, as he had applied to him for a house, and witness felt certain it would suit him. Subsequently, an appointment was made, but Mr. Coombes did not buy. At that time the estate appeared on the books of his firm, but he did not tell Mr. Parker about that. After the expiration of the lady's tenancy, he continued to issue cards to view. On November 2, 1892, Mr. Parker wrote with reference to an offer from him of 500 guineas for renting the house during the winter, stating that he would submit it to the owners, and it was likely they would let, but added that otherwise witness had no authority to offer it to anyone else. Witness took a client over, but half the furniture had been taken out. On September 22, 1893, witness wrote inquiring whether the house could be let furnished for the winter, and also whether the terms were still the same in accordance with his last instructions.

The learned Judge: What instructions?

Witness: Those given in the conversation with Mr. Parker I spoke of. He saw Mr. Parker before that in 1892, when he was endeavouring to sell a house for private occupation. As to no authority to offer it to anyone else, that referred to letting it furnished, and the fact of witness going with a client was simply a matter entirely by itself. It was never suggested he could not sell. In his first interview Mr. Parker instructed him to ask £45,000 for a long lease

of about 70 years and a ground rent of about £246 a year. Witness said it was a very stiff price, and Mr. Parker said if it was offered the trustees were prepared to accept it. Witness asked for instructions to sell the house. Mr. Parker qualified his instructions with the fact that he must not issue orders broadcast, etc. In 1892 he met Mr. Parker and they walked down Cornhill together. Mr. Parker declined the house he offered for his own occupation, but asked how it was he did not make an offer for Grosvenor Street, as the trustees were anxious to sell. Witness said the price was very high, and Mr. Parker replied that if he got an offer of something less they might consider it. On February 2, 1895, he repeated the enquiry of September 22. On February 6 Mr. Parker wrote saying the house was still for sale, and if a sale was effected shortly the trustees would expect a little less than £45,000. On February 15 Lady Delamere called on him, and he submitted to Mr. Parker an offer of £10,000 on her behalf as a basis for negotiations. Mr. Parker said the price was absurd, and witness asked if he would consent to £15,000. Mr. Parker said he would not advise selling for less than £18,000. Subsequently he saw Lady Delamere, but made no other offer. Mr. Parker afterwards wrote saying he had heard witness had the property on his books, but denied that he had authority to act as agent for the sale, and said he had no authority to sell it for £20,000 and must ask him to withdraw it from his books. Witness wrote back a long letter, saying they had acted in good faith. He heard that Lady Delamere became the purchaser at £17,500, and now brought this action to recover the commission. He did not hear Mr. Parker say he would write to Messrs. Lofts and Warner, as they were sole agents, and ask if they would divide commission with him. He knew that the boards of Messrs. Lofts and Warner, and Messrs. Grogan and Boyd were put up. Mr. Carson argued that plaintiff could not spin out a contract from instructions to get an offer from Mr. Coombes.

Mr. Bernard Parker said he told the plaintiff his instructions were to employ Messrs. Lofts and Warner, and therefore he could not give him any instructions. Mr. Copping mentioned a client willing to give £45,000, and witness told him if that was the case he had better see Messrs. Lofts and Warner and arrange about the

commission. Mr. Copping said he did not think he would be able to arrange with them, and witness then said he would endeavour to do so if plaintiff introduced a purchaser. Witness gave him the length of the lease, particulars and general description of the house. He certainly did not have the conversation in Cornhill that Mr. Copping gave, but he probably might have mentioned the house. On February 20, 1895, when Mr. Copping offered £10,000 witness said if he had a *bona fide* offer of £20,000 to £25,000 and gave him a name, perhaps they might complete the business. Witness wrote to Messrs. Lofts and Warner when plaintiff gave the name of Mr. Coombes, and had a reply. On February 25 he wrote to Mr. Romer Williams, solicitor to Lady Delamere, stating that at the request of Messrs. Lofts and Warner he could say the latter were the authorised agents, and until then he had not heard her name. Messrs. Lofts and Warner completed the sale. By arrangement with this firm the boards of Messrs. Grogan and Boyd and Messrs. Gillows were put up.

Counsel for the defendants contended that there must be a contracting relation between the plaintiffs and defendants to entitle the former to commission.

Mr. Crump, Q.C., insisted that plaintiff had been led on and that Mr. Parker had recognised him as agent.

His Lordship, in giving judgment, said he was not satisfied that there was sufficient proof of express contract of agency as between the parties. It was not very creditable for an experienced solicitor like Mr. Parker to make any such arrangement as plaintiff spoke of in so unbusinesslike and informal a way. Beyond that he had to choose between two contradictory statements. Plaintiff was always aware that he had no general authority, and the learned Judge did not think there was any contract; in the absence of any specific contract, therefore, he must give judgment for the defendants, with costs.

On February 6, 1897, the Court of Appeal (the Master of the Rolls and Lords Justices Lopes and Rigby) was asked to grant a new trial. The application, however, was refused, with costs, and the original judgment upheld.

Counsel for the plaintiffs: Mr. Crump, Q.C., and Mr. Samuel Green; counsel for the defendants: Mr. Carson, Q.C., and Mr. T. E. Scrutton.

Lumley v. Hoolahan.

Westminster County Court, November 28, 1896.—Before his Honour Judge Lumley Smith.

Reported ESTATES GAZETTE, Vol. xlvii., p. 795.

First introducer—Alleged fresh transaction.

The plaintiffs in this case were Messrs. J. A. Lumley and Co., house agents and auctioneers, of 34, St. James Street, and they sued the defendant to recover the sum of 20 guineas, being the agreed amount of commission payable in respect of the transfer of the lease of the defendant's premises at 9, Old Bond Street.

Mr. Williams was called and said he was manager to the plaintiff firm, and in March last he received instructions from the defendant to find a tenant for the premises in question. It was agreed that the plaintiff should have the exclusive right of placing a board upon the premises, and that if they were successful in procuring a purchaser for the lease they should be paid a lump sum of 20 guineas as commission for their services.

Shortly afterwards the matter was introduced to a client of the name of Rogers, who, upon being shown over the place, agreed to take it upon the terms offered. His solicitors, however, raised an objection to a restrictive clause in the lease, and consequently the whole matter fell through, but it was subsequently discovered that the defendant had re-opened negotiations with Rogers and had succeeded in letting the place to him. The plaintiffs, therefore, claimed their commission on the ground that inasmuch as they were the first introducers of the ultimate purchaser, they were just as much entitled to their commission as they would have been had they been employed to carry the matter through.

The defendant's case was that, although he employed the plaintiff in the first instance, they afterwards retired from the matter so far as Rogers was concerned. He (defendant) still gave them the option of finding another purchaser, but they did not do so, and in the meantime he personally re-opened the negotiations with Rogers and sold the premises to him without the intervention of the plaintiff.

His Honour said in this case he was satisfied that the plaintiffs were entitled to be paid for having given the first introduction, and therefore judgment would be for the amount claimed, with costs.

May and Rowden v. McGubbin.

Westminster County Court, December 3, 1895.—Before his Honour Judge Lumley Smith.

Reported *ESTATES GAZETTE*, Vol. xvi., p. 795.

Several agents employed—First introducer entitled to commission.

The plaintiffs in this case were Messrs. May and Rowden, house agents and auctioneers, carrying on business at 39, Maddox Street, Regent Street, and they sued the defendant, who resides at 227, Piccadilly, to recover the sum of £7 10s., being commission at the rate of 5 per cent. for services rendered in procuring a tenant for the upper part of the premises in question.

The plaintiffs' case was that in June of the year named, at which time they had the defendant's premises on their books, they introduced a Miss Viner, who subsequently became the tenant, and they now claimed to be paid the usual commission.

Mr. Rogers was called, and said that at the time when the letting took place he was a clerk in the employ of the plaintiff. He had previously called upon the defendant and obtained from him permission to put the premises on the books of the firm, and in due course Miss Viner, who was one of their clients, was introduced to the premises and ultimately became the tenant.

Mr. Rowden, a member of the plaintiffs' firm, was called, and deposed to having had a conversation with the defendant about the rent. The defendant was asking £200 a year, and witness suggested that he would stand a much better chance of letting if he took £150. Defendant acted on that suggestion, and agreed to take £150 a year.

Miss Viner was called and said she had always considered that the plaintiffs were the persons through whom she took the premises.

For the defence Mr. McGubbin was called, and said he never recognised any liability to the plaintiff in this matter, as their board was never upon his premises, and he had no recollection of ever having employed them. When Miss Viner called upon him she produced a card from Messrs. Elliott, Son and Boyton, but no mention was ever made of the plaintiff firm. He had already paid commission to the latter firm, and understood that they had divided it with Messrs. Banks and Talbot. In his opinion, the letting was brought about by Messrs. Elliott, Son and Boyton, and he failed,

therefore, to see why he should be in any way liable to the plaintiffs.

In giving judgment, his Honour said that a large majority of these house agency disputes were about owing to the fact that people in search of premises persisted in going to several firms of agents. The invariable result was that each firm gave an introduction to the same premises, and then there was a question as to who ought to be paid commission. It very often happened that landlords had to pay agents commission twice over, and that was what would occur in this case, as he (the Judge) was quite satisfied that the plaintiffs were the people who first introduced Miss Viner. The result, therefore, would be that the plaintiffs would recover the amount of the claim, with costs.

Sleisinger v. Gullin.

Westminster County Court, January 22, 1896.—Before his Honour Judge Lumley Smith.

Reported *ESTATES GAZETTE*, Vol. xlvii., p. 153.

Rate of commission—Alleged special agreement.

The plaintiff in this case was the executor of the late Wilkie Collins, and he sued the defendant, a house and estate agent, carrying on business at 77, New Oxford Street, under the style of Abbot and Co., to recover the balance of a deposit of £42 10s., which had been paid to him in respect of the purchase of a house at Kilburn, the property of the late Wilkie Collins.

It appeared from the opening statement of counsel that the plaintiff, through his solicitors, instructed the defendant to find a purchaser for the house in question, and they were, and always had been, willing to pay him commission at the rate of 2½ per cent., but he appeared to be under the impression that he was entitled to 10 per cent., and had retained the whole of the deposit of £42 10s. as commission on the sale of a house which realised a sum of £425.

The defendant was called, and frankly admitted the facts as put forward by the plaintiff's counsel, but at the same time he contended that in this particular case he was entitled to charge 10 per cent. in pursuance of a special arrangement made between himself and the managing clerk to the plaintiff's solicitors, whereby it was agreed that if he sold the house by auction he was to have 5 per cent. commission, and to be allowed all expenses, and 10 per cent. if he succeeded in selling it

by private treaty. In due course he succeeded in introducing a client of the name of Clarkson, who purchased the property for £425, and paid him a deposit of £42 10s., which amount he retained as commission. Had he sold the house by auction, the expenses, coupled with 5 per cent. commission, would have exceeded his present claim of 10 per cent., and even as it was he had spent about £10 in out-of-pocket expenses, which sum was included in his 10 per cent. commission.

Cross-examined: He knew the ordinary rate of commission was 5 per cent. on the first £100, and 2½ on the remainder, but that did not preclude an agent from making special terms when occasion warranted his doing so.

His Honour, in giving judgment, said the whole question between the parties was as to whether the rate of commission should be 2½ or 10 per cent., and he (the Judge) was not quite disposed to agree with the view of either side in the matter. He had come to the conclusion that the plaintiff had rather under-estimated the defendant's services in suggesting 2½ per cent., and the defendant was a little outside the mark in claiming 10, as the plaintiffs were not bound by an arrangement made by their managing clerk, if it was an unreasonable one. He (the Judge) thought the fairest way of settling the dispute would be to allow the defendant his commission at the rate of 5 per cent. on the amount realised by the sale, together with £10 in respect of out-of-pocket expenses. The result of that would be that the defendant would get £31 5s. 8d., and the balance of the £42 10s. would go to the plaintiff, but under the circumstances each party would have to pay their own costs.

Lamb and Co. v. Theobald.

Westminster County Court, January 28, 1906.—Before his Honour Judge Lumley Smith

Reported ESTATES GAZETTE, Vol. xlvii., p. 153.

Sharing commission—Putting up board—Custom.

In this case both the parties were house agents and auctioneers, and the question at issue between them was as to which of them was entitled to the commission on the letting of a house at Sussex Terrace, Regent's Park, or whether, in the alternative, it should be equally divided between them.

The plaintiffs carry on business at Upper Baker Street, and they sued the defendant, who is the agent

to the trustees of certain property at Regent's Park, to recover the sum of £13 10s., being the amount of commission alleged to be due to them in respect of the letting of the house in question.

It appeared from the evidence of plaintiff that in June, 1895, he received certain instructions from a Mr. William Smith, who, he understood, was acting on behalf of the defendant, and in pursuance of what he said, he placed one of his boards over the premises and succeeded in introducing a Mr. Mortlock, who subsequently became the tenant of the house at a rental of £180 per annum. Upon application for payment of the commission the defendant repudiated liability on the ground that the house had been let by another firm. He afterwards admitted, however, that plaintiff's firm had negotiated the letting, and he had since paid into Court half that amount of commission which he had received in his capacity as agent acting on behalf of the trustees.

For the plaintiff it was contended that he was clearly entitled to the whole of the commission as he alone had been instrumental in bringing about the letting and had never recognised the defendant as co-agent in the transaction.

For the defence Mr. Theobald denied ever having employed the plaintiffs as his agents in the matter, though, at their request, he allowed them to place a board in front of the house. It was the custom amongst house agents to share the commission under such circumstances; that he had been always willing to do, and had paid the plaintiff's share into Court.

His Honour thought that this was a case in which the agents share the commission, and consequently found that the amount paid into Court by the defendant was sufficient. Each party to pay their own costs, but costs to the plaintiff up to the time of the payment into Court of the £6 15s.

Inman v. Child and Another.

Marylebone County Court, February 17, 1896.—Before his Honour Judge Stonor.

Reported *ESTATES GAZETTE*, Vol. xlvii., p. 293.

Property brought to purchaser's notice through poster—Lapse of time not unreasonable—Commission recoverable.

It was stated that the claim rested on two or three grounds. Instructions were given in April, 1895, to

the plaintiff to sell the property, and on April 20, in answer to enquiries as to plaintiff's charges, defendants wrote a letter which formed the ground of the claim. It was to this effect:—"As regards the charges, if the property or any part of it is sold either before, at, or a reasonable time after the auction, the usual commission, as per enclosed scale, together with the costs out of pocket, to be paid. In the event of no sale, the expenses and a moderate fee." The property was arranged to be sold on May 23, but as the reserves for the freeholds were not reached at the auction, they were bought in. After that they were sold without the instrumentality of Mr. Inman. But supposing so, plaintiff contended that they were sold within a reasonable time after the auction—within 20 days, at any rate—and counsel thought that was a reasonable time. There were several lots put up, and one leasehold lot was sold. As far as the "moderate fee" was concerned, counsel contended that in any possible event they should be entitled to a moderate fee; but he said that on that document he was absolutely entitled to his commission, as it was sold within a reasonable time after the auction, and plaintiff had really introduced the purchaser to the property before the day of the auction. The plaintiff claimed £18 15s.

Mr. Inman, the plaintiff, was called, and bore out his counsel's statement. He added that the day before the sale Mr. Stephens, the actual purchaser of the property, called on him on certain business, and witness specially called his attention to the property. Mr. Stephens read the conditions and particulars, and said, "No that is not the class of property that would suit me. Small property costs too much in repairs and collection." He, however, did become the purchaser on June 17. On that day witness received a letter from defendant's solicitors, Messrs. Allen and Edwards, saying that "they had sold the freehold."

In cross-examination, witness said he found out who purchased the property by making enquiries. He had to write several letters to defendant's solicitors before he discovered who it was.

Mr. James Stephens, for the defence, stated that he resided at 129, Maida Vale. In the month of April he noticed the property in Marylebone for sale. There were several properties under one bill or poster with Mr. Unwin's name to it. He called on Mr. Inman with

reference to some property in Richmond Street. He gave witness particulars of that as well as particulars of Mr. Unwin's and a catalogue. When he saw the district in which these freeholds were he said he should not think of that—nor did he. Witness did not attend the sale. Subsequently to the auction he met young Mr. Unwin, and after that the latter called on him. A conversation ensued respecting the property, at the end of which, hearing what the reserve price was, witness said he was willing to give £600. He signed the contract for sale 20 days after the auction. Witness also stated that he had called on Messrs. Allen and Edwards before he bought the property. He happened to notice some particulars of sale on the desk, and on enquiry was told that some of the property had not been sold at the auction. He made them an offer of £650 for the freehold, and they wrote to him asking him to increase his offer. He eventually bought the property for £650.

Cross-examined, witness said that the first intimation he had of the property was through the medium of a poster in Mr. Inman's office. He might have taken the particulars away with him, but should not have preserved them, as he had no idea of purchasing the property.

His Honour having summed up, the jury found that the sale took place within a reasonable time after the auction, and further that the sale was caused by the introduction of Mr. Inman.

Judgment was entered for the plaintiff for £18 15s.

Counsel for the plaintiff: Mr. Wildey Wright;
counsel for the defendant: Mr. Clavell Salter.

Prince v. Dashwood and Co. (Limited), and Another.

Queen's Bench Division, April 18, 1896.—Before Mr. Justice Mathew.

Reported ESTATES GAZETTE, Vol. xlvii., p. 578.

Special agreement—Alleged waiver of clause—Evidence.

This was an action to recover £2,500 commission due under an agreement whereby the plaintiff undertook to procure a purchaser of a brewery at East Grinstead belonging to the defendants. The agreement in question was in the following terms:—² In the event of

your effecting the sale of my brewery as above for the sum of £100,000, or any less sum I may agree to accept, I hereby agree immediately upon completion of the contract for sale effected by you, or through your instrumentality, to pay you a commission at the rate of 2½ per cent. upon the said sum of £100,000, or such sum as I may accept for the said brewery, and I, the above-named Septimus Prince, hereby agree in consideration of the above terms to use my best endeavours to effect such sale without unnecessary delay." The plaintiff procured a purchaser for the brewery for £77,500, which was accepted by the defendants, and a draft agreement was sent to the purchaser's agents on May 2, 1895. That agreement contained a clause that the purchase price should be increased in proportion to the profits shown upon an examination of the books. The purchaser's agent refused to accept that clause, and the negotiations fell through. Subsequently the defendants sold their brewery to a company through the instrumentality of their solicitor. It was contended on the part of the plaintiff that the defendant Dashwood waived the increase clause in the agreement, and that the defendants only broke off negotiations when they found another purchaser. For the defendants it was contended that the plaintiff had not earned any commission, as no definite contract had been signed. It was further denied that the negotiations broke off through the defendants' default, and that the defendant Dashwood never agreed to waive the increase clause in the agreement.

Mr. Justice Mathew, in giving judgment, said the question was whether he could accept the statement of plaintiff that the defendant agreed to waive the increase clause. If the defendant had so agreed the contract would have been accepted by the buyer, and then the plaintiff would have been in a position to complain if he did not get his commission. He could not act upon the evidence of the plaintiff uncorroborated against the evidence of the defendant and his solicitor. He gave judgment for the defendants. but without costs.

Counsel for the plaintiff: Mr. Kemp, Q.C., and Mr. W. Evans; counsel for the defendants: Mr. Dickens, Q.C., and Mr. Upjohn.

Rankin v. Webb.

Queen's Bench Division, April 26, 1896.—Before Mr. Justice Mathew.

Reported ESTATES GAZETTE, Vol. xlvii., p. 578.

Disputed agreement to pay commission.

This was an action brought to recover £1,300 commission alleged to be due for procuring a loan upon the Kensington Terrace Estate, High Street, Kensington. The defendant, Mr. Jubal Webb, early in 1893, had purchased the Terrace Estate, and asked a friend—Mr. Williams—to try and procure a loan of £130,000 upon the security of the estate. Mr. Williams introduced the plaintiff to the defendant, and the defendant in April, 1893, gave the plaintiff a commission note promising him 1 per cent. commission upon any loan procured through him at not more than 5 per cent. interest. The plaintiff negotiated with the United Kingdom Insurance Office, who offered to make an advance of £130,000 at 4½ per cent., but stipulated for one year's interest to be paid in advance. That was communicated to the defendant, who said the reasonable thing would be to pay a half-year's interest in advance. On June 2 there was a board meeting, and the directors of the insurance office insisted upon a year's interest in advance. The plaintiff told the defendant of the decision of the board, and it was alleged on the part of the plaintiff that the defendant assented to the arrangement. Nothing was done till June 16, when the defendant declined the loan, objecting to the rate of interest and the interest paid in advance. The defendant subsequently procured the loan from another office at 4 per cent. It was contended for the plaintiff that the defendant only broke off the negotiations because he found he could get the loan at a lower rate of interest, and not on account of the payment of interest in advance. The defendant stated that he repudiated the payment of interest in advance, and had never agreed to the directors' terms.

Mr. Justice Mathew, in giving judgment, said that all depended upon what had happened at the interview between the plaintiff and defendant on June 2—namely, whether the plaintiff had introduced a proposal of which the defendant approved. He was satisfied the plaintiff had truly stated what he understood as the effect of the interview with the defendant, but he came to the conclusion that the plaintiff's understanding of it was not

correct. At the same time he could not accept the defendant's version, and he thought the justice of the case would be met by judgment for the defendant, without costs.

Mr. Scott Fox and Mr. Rowlatt appeared for the plaintiff; Mr. Cock, Q.C., and Mr. R. Turner for the defendant.

Robinson and Williams v. Benjamin.

Westminster County Court, May 8, 1896.—Before his Honour Judge Lumley Smith.

Reported ESTATES GAZETTE, Vol. xlvii., p. 769.

Denial of retainer—Disputed introduction.

The claim in this case was to recover $7\frac{1}{2}$ per cent. on the letting of the defendant's house at Grafton Street, Piccadilly, plaintiffs being a firm of house agents carrying on business at Hanover Square.

The defence was that the plaintiffs were never employed in the matter, and that the letting was brought about without any intervention on their part.

The plaintiffs' chief clerk, Mr. Colcut, was called, and said that in August of last year he found that the upper part of the defendant's premises in Grafton Street were to let, and in the ordinary course of business he called there for the purpose of getting particulars. On the first occasion he saw the defendant's manager, and told him he was a representative of the plaintiffs' firm, and that if he would give him particulars of the place they would find him a tenant on the usual terms of commission. Upon that he was given full particulars, which he took down in writing, and which were duly entered in the plaintiffs' register. In due course a client of the name of Munday was introduced and ultimately took the place, but for some reason or other the defendant refused to pay them their commission.

For the defence, Mr. Emil Victor was called, and said he was secretary to the defendant, who owned a good deal of property in the neighbourhood. He absolutely denied ever having given instructions to the plaintiffs' clerk to let the property, and had no recollection of ever having seen him. A great many people called and asked for particulars, but it was quite impossible for him to tell whether they were persons in search of premises or whether they were agents. He certainly never gave any instructions, nor did he

promise to pay commission, as he had no authority to do so. Among the persons who called at the premises was a Mr. Munday, who made an offer of £400 a year, which offer was afterwards accepted, but it was not until afterwards that he heard of the plaintiffs' claim in the matter. He then told them that he could not pay commission as he did not recognise that they had introduced Mr. Munday.

Mr. Benjamin was called and said he never knew the plaintiffs in the matter. He had previously placed the property in the hands of Messrs. Lumleys, but they had made no claim upon him for commission. His secretary had authority to furnish particulars of the property to persons who asked for them, but certainly not to employ agents.

Mr. Munday was called and stated in the course of his evidence that the plaintiffs had acted as his agents for some time past. With regard to the premises in question, he did not think he ever would have taken them had it not been for what the plaintiffs had done in bringing them before his notice.

In giving judgment, his Honour said he believed the evidence of the plaintiffs' clerk, and he was also of opinion that the defendant's secretary had authority to employ the plaintiffs. He was equally satisfied that the letting was brought about by what the plaintiffs had done in the matter, and therefore they would recover judgment for the amount claimed and costs on that scale.

Lewis v. Goodenough.

Bristol County Court, May 19, 1896.—Before his Honour Judge Austin.

Reported ESTATES GAZETTE, Vol. xlvii., p. 759.

A "dry" introduction sufficient.

Messrs. Lewis and Sons, estate agents, of Clifton, sued Mr. Benjamin Goodenough for £16 10s. commission on the sale of a house in Leigh Road South, Clifton.

The plaintiffs claimed that they originally introduced a purchaser, who subsequently, through other agents, bought the house for £1,100. They produced a counterfoil of an order to view the house given to Mr. Ricketts

in August last, the price of the house being £1,150. They heard that in February last the house had been sold to the same gentleman for £1,075, and now sought to recover $1\frac{1}{2}$ per cent. commission.

Mr. Ricketts said in August, 1895, he was seeking for a house. Then he wanted to rent, and had no intention of buying. He went and saw the house with the plaintiffs' order, and, finding it was for sale only, he wrote them and said it was no use to give him orders to view houses for sale, as he was not in a position to buy. He liked the house, and the recollection of it remained in his mind. In February he saw it in Messrs. Hughes and Sons' list, and they gave him an order to view. One of that firm's clerks conducted the negotiations which resulted in the purchase.

The Judge: I have no doubt that Messrs. Hughes well earned their commission, but the question is whether Mr. Goodenough must pay twice. I was once in a case where a gentleman had to pay three commissions.

It was argued for the defendant that a dry introduction was not sufficient to recover a commission, but the Judge held that it was.

His Honour said it was plain law that where a transaction in respect of which commission was sought to be recovered flowed from an introduction, as he thought was the case here, such commission was recoverable. There must be a verdict for the plaintiffs for £15 15s., with costs.

Piggott v. Palmer.

Queen's Bench Division, June 10, 1896.—Before Mr. Justice Grantham and a Jury.

Reported: ESTATES GAZETTE, Vol. xlvii., p. 878.

Disputed rate of commission.

This was an action, brought by Mr. F. Piggott, house and estate agent, of George Street, Richmond, to recover £126 5s. commission on the introduction of a purchaser to the defendant, Mr. Palmer, a chemist, on the sale of his business at No. 50, George Street, Richmond.

From the evidence adduced it appeared that Mr.

Spearman communicated to the plaintiff that Parke's Drug Stores Company, of Brixton, were desirous of opening a shop in Richmond. Mr. Piggott, sen., called on the defendant in January, 1894, and informed him of the possible rival. The defendant informed him that he might sell his business, and Mr. F. Godfrey Piggott, the son, at once opened communications with Mr. John Murison, managing director of Parke's Drug Stores. In January, defendant called at the plaintiff's offices, and the clerk (Mr. Couchman) said he put down the following terms in the directory, in defendant's presence:—Returns £2,600; rent £250, with £50 let off; lease 18 years unexpired; business, as it stands, £2,500. Subsequently the plaintiffs called on Mr. Murison, who eventually declined to buy the goodwill, as the company preferred to make their own. Mr. Piggott offered other premises in the same street, but the negotiations were not successful. In the course of 1894 they offered defendant's premises to a Mr. Douglas, and defendant recognised him as a probable purchaser. The shop was not sold to him, however. On January 8, 1895, Mr. Piggott called on the defendant and asked if his terms were still the same, and he replied that they were and that he should be glad to get a smaller business as his health was not good. Plaintiff told him he should write again to Mr. Murison, and did so. On May 16, hearing the property was sold for £2,400 to Parke's Company, he wrote asking for his commission, which was refused. In February, 1895, plaintiff and defendant had a dispute on the subject of the commission.

Mr. F. Godfrey Piggott, in his evidence, said he did not give the printed scale of commission to the defendant. He was claiming on the Institute of Estate and House Agents' scale, as contained in the *ESTATES GAZETTE* directory.

Mr. Murison said he heard of the particulars through the plaintiff before he saw the defendant.

For the defendant, Mr. Edmunds denied that he was liable, but even if he was £18 15s. on the lowest basis was sufficient, and £62 10s. was the most that could be claimed on the sale of the lease, as the plaintiff was not a transfer business agent.

The jury returned a verdict for £120, and judgment was given accordingly.

Counsel for the plaintiff: Mr. McCall, Q.C., and

260 COMPENDIUM OF COMMISSION CASES.

Mr. Harper; counsel for the defendant: Mr. Lewis Edmunds, Q.C., and Mr. Stevens.

Haynes v. Jackson.

Westminster County Court, October 6, 1896.—Before his Honour Judge Lumley Smith.

Reported ESTATES GAZETTE, Vol. xlviii., p. 563.

Commission not recoverable—No alternative claim on a quantum meruit—Non-suit.

This was an action to recover the sum of £19 3s., commission at the rate of 5 per cent., in respect of professional services rendered to the defendant.

The plaintiff, Mr. Joseph Charles Haynes, house agent and auctioneer, carrying on business in High Holborn, stated that sometime in June, 1896, the defendant called upon him and gave him full particulars relating to a lodging house, of which he was desirous of disposing. Acting upon those instructions, he (plaintiff) introduced the matter to various clients, among whom was a Captain Keen, whose name was at that time on his books. As a result of his efforts, he (plaintiff) was successful in introducing Captain Keen as a purchaser, he being willing to take the place over on the defendant's terms. That fact was communicated to the defendant, but for some unexplained reason he declined to accept Captain Keen, and consequently the matter fell through. He (plaintiff) thereupon made a claim for his commission, on the ground that he had carried out the defendant's instructions, and had introduced a willing and suitable tenant. The defendant, however, repudiated his liability, on the ground that he was not bound to accept the tenant, and further stated that a precisely similar claim was being made against him by another firm.

In giving judgment, his Honour said that, strictly speaking, a house agent was only entitled to his commission in the event of the bargain being carried out, or in the event of the transaction falling through in consequence of a wrongful act on the part of the lessor. In this case the plaintiff had failed to establish his claim to the commission, and as there was no alternative claim for damages, he (the judge) would non-suit the plaintiff, with costs.

Edwards and Co. v. Welford.

Lambeth County Court, October 14, 1896.—Before his Honour Judge Emden.

Reported ESTATES GAZETTE, Vol. xlviii., p. 596.

Instructions to sell by auction—Subsequent sale by private treaty by vendor—Commission recoverable.

The plaintiffs were auctioneers and house agents, of 236, Railton Road, Herne Hill, and the defendant a licensed victualler, of the Royal Oak public-house, Hendon. The action was brought to recover £12 2s. commission alleged to be due on the sale of 142, Railton Road. Alternatively plaintiff claimed £21 2s. as damages for breach of contract.

The evidence of Mr. Herbert Aldridge, a partner in the plaintiff firm, went to show that in May witness called upon Mr. Welford with regard to the sale of the house in question, and an arrangement was then come to that the plaintiff firm should have the selling of the house exclusively in their hands, and in consideration of this it was agreed that the commission should be at the reduced rate of $2\frac{1}{2}$ per cent. on the amount realised, plus the expenses of advertising, etc. Defendant also gave instructions that no one was to be allowed to view the house without an order from the plaintiffs. Eventually it was decided that the house should be put up to auction, and bills were issued and a room hired at the London Auction Mart, with a view to its offer on July 21. On the evening of the 20th, however, the plaintiffs received a telegram from Mr. Welford, directing them not to offer the house by auction, as he had sold it by private treaty. It subsequently transpired that the purchaser was a Mr. Woolley, whose wife had previously obtained all particulars concerning the house, and an order to view from his (witness's) office.

Evidence having been given by plaintiff's clerks as to Mrs. Woolley's visit to the office, and her request for information and an order to inspect the house,

Mr. Mallinson denied that the plaintiffs were instrumental in introducing Mr. Woolley. That gentleman was a personal friend of the defendant, and it was solely through personal conversation that the sale was effected.

The defendant was called, and stated that it was stipulated by him that his liability should not exceed £5 for the auction, which amount he had paid into

262 COMPENDIUM OF COMMISSION CASES.

Court, and that he should be at liberty to sell by private treaty if he chose.

Mr. Woolley, the purchaser, and Mrs. Woolley also gave evidence.

Mr. Pocock cited the decisions of the learned Judge at the Westminster County Court in the case of "*Rainey v. Vernon*," and also in "*Green v. Bartlett*," and other cases.

His Honour remarked that in this case it had been proved to his satisfaction that the defendant did enter into an arrangement with the plaintiff that his house should be put up for sale, but upon the evidence of the verbal agreement he did not think there was any special contract for a fixed sum in the event of non-sale. He came to the conclusion that the property was sold through the intervention of the plaintiffs, and he must give judgment for them for the amount claimed, with costs.

Counsel for the plaintiffs: Mr. W. A. Pocock; counsel for the defendant: Mr. Mallinson.

Climpson and Johnson v. Symons.

Wandsworth County Court, November 9, 1896.—Before his Honour Judge Lushington.

Reported *ESTATES GAZETTE*, Vol. xlviii., p. 716.

A double commission allowed.

This was an action brought by Messrs. Climpson and Johnson, auctioneers, of Balham, against Mr. Symons, a retired tradesman, for £5, commission agreed to be paid on the purchase of certain property at Wimbledon.

The circumstances were somewhat peculiar, as the plaintiffs (who conducted their own case) negotiated a sale of the property to defendant, and to facilitate the sale had arranged to reduce their commission to some extent, the vendor agreeing to pay £10, and the purchaser making a verbal offer to pay £5. This verbal offer was confirmed in writing by the plaintiffs. Upon the completion of the purchase the vendor paid the £10 agreed, and the defendant was applied to for the £5 agreed to be paid, but without eliciting any reply whatever.

The defence was that the £5 was only to be paid in the event of the purchaser obtaining the property at a less sum than that eventually paid, and also that if such a contract had been made it had been waived.

His Honour, in summing up, stated that this was a case in which a firm of estate agents sought to recover commission not only from the vendor, but also the purchaser, a thing which in the ordinary course he would never allow, but having regard to the exceptional circumstances of the case, the plaintiffs having reduced their commission, and the vendor being cognisant of the fact that they expected to receive £5 from the purchaser, and approving it, he considered plaintiffs were entitled to recover on that ground. He was further of opinion that as there had been no repudiation by the defendant of the plaintiffs' letter confirming the offer made by him, the contract held good. With regard to the question of waiver, after hearing evidence on both sides as to an interview between Mr. Lindsey Johnson and defendant's son-in-law, who was acting on Mr. Symons' behalf, he was of opinion there had been no waiver of contract, and gave judgment for the plaintiffs for the full amount claimed and costs.

Giddy and Giddy v. Benyon.

Queen's Bench Division. December 9, 1896.—Before Mr. Justice Cave.

Reported ESTATES GAZETTE, Vol. xlviii., p. 871.

Vendor refusing to sell—Commission recoverable.

In this case Messrs. Giddy and Giddy, estate agents, of 121, Pall Mall, S.W., claimed £131 5s. damages as compensation for the loss of commission which would have been earned by them but for an alleged breach of an agreement by the defendant to sell an estate known as Hawthorn Hill, Bracknell, Berks.

It appeared that as far back as 1891 the defendant had instructed the plaintiffs to let or sell a country house and gardens called Hawthorn Hall, near Bracknell, Berks, and up to April, 1896, had given various instructions from time to time as to the terms, first fixing the price at 5,000 guineas, but afterwards increased it to £5,500. The plaintiffs, in pursuance of such instructions, placed the property on their books and corresponded with likely purchasers. On April 28, 1896, they obtained an offer of 5,000 guineas from Lady Brabourne, who wanted possession on June 10, and Mr. O. F. Giddy went down to see the defendant on April 29. The conversation extended over an hour, and Mr. Giddy said that the defendant authorised him

to make a counter offer as to the date of giving possession, by substituting July 1 for June 10. He made that offer to Lady Brabourne, who accepted it on April 30. Mr. and Mrs. Benyon, on the other hand, said they did not authorise him in either respect. They said they discussed the question whether they should accept £5,250 or whether they should stick to £5,500, and that nothing definite was said. The date of July 1 was also mentioned, but they said it was left open. The next day the defendants wrote saying they could not accept £5,250, but Mr. Giddy at once replied that the refusal came too late.

Mr. Benyon said that after the interview he left all the correspondence in the hands of his wife.

The learned Judge, in summing up, said it was unfortunate that the parties had not put down in writing what they had agreed at the interview.

The jury returned a verdict for the plaintiffs for the amount claimed. Judgment was given accordingly, with costs.

Counsel for the plaintiffs: Mr. W. Wills; counsel for the defendant: Mr. Lush Wilson, Q.C., and Mr. Vesey Knox.

Holland v. Baker and Sons.

Queen's Bench Division, January 18, 1897.—Before Mr. Justice Day.

Reported *ESTATES GAZETTE*, Vol. xlix., p. 134.

Disputed rate of commission.

This was a claim for £70 13s. 4d. made by the plaintiff, formerly the owner of the Ealing Park Estate, against Messrs. Baker and Sons, auctioneers and agents, 11, Victoria Street, S.W., who acted as agents for the sale of the property, and who contended they were entitled to a commission of 2½ per cent. on a certain sale in 1895.

Mr. Whately said Mr. Baker, as agent for the plaintiff, received £600 as deposit on the sale of some part of the estate, and had paid £376, but retained other sums for commission, which made the sum owing from him to the plaintiff £70 13s. 4d. The only question to be fought was whether Mr. Baker was entitled to 2½ per cent. commission on this particular sale, or 1½ per cent., plaintiff contending that the latter amount was proper, and that the disbursements for advertising

were limited to £20, while £23 19s. had been charged. The transactions between the parties commenced in 1882. In 1881 Mr. Holland bought this very large property, the Ealing Park Estate, and from time to time sold portions of it. The whole value was £30,000, and he sold portions through Mr. Baker for £22,000. There was no doubt that for these previous sales in 1882-3-4 the plaintiff had paid $1\frac{1}{3}$ per cent., that was $2\frac{1}{2}$ per cent. with a rebate of one-third. From 1884 to 1895 there were no payments between the parties, but in 1895, after an interview, another portion was sold by Mr. Baker, who then claimed $2\frac{1}{2}$ per cent. Counsel read a letter from the plaintiff, written on April 24, 1896, in which the sum to be spent for advertisements by Mr. Baker was to be left to his discretion, and the commission charged was to be as formerly. The plaintiff disputed the fact that he had agreed to pay $2\frac{1}{2}$ per cent. without rebate, and there was nothing in writing to show it was not so. As a matter of fact, more of the property was offered for sale in 1895, but the sale proved abortive, and plaintiff denied that there was any fresh agreement made in 1895. That property was eventually sold for £8,000, but nothing turned on the sale in this case. Counsel produced the bills for commission and sales paid in 1882-3-4, where one-third rebate had been allowed.

Plaintiff's evidence was taken on commission, and bore out these statements. In cross-examination, he said he paid one commission of $2\frac{1}{2}$ per cent. prior to 1882, before he was persuaded to have large dealings in the property. Ealing Park Estate was introduced to him by Mr. Baker as a profitable investment, and it was part of their arrangement that when there was no sale there should be no commission. In 1895 he gave instructions to sell another portion, and he felt quite sure there was no discussion or anything said about commission. He desired that out-of-pocket expenses should not exceed £20, and Mr. Baker agreed.

For the defence, Mr. Rufus Isaacs submitted that in 1895 there was an interview in which plaintiff gave defendant instructions to put the property up for sale, and agreed to pay $2\frac{1}{2}$ per cent., and out-of-pocket expenses. That sale proved abortive. In 1896 he wrote the letter mentioned, and Mr. Baker understood him to refer to the commission agreed to in 1895, namely $2\frac{1}{2}$ per cent.

Mr. Alfred Baker, the defendant, produced his day book in which an entry had been put down from his dictation after the interview in May, 1895, that 2½ per cent. and disbursements were to be allowed. He could not remember the exact terms of the conversation. The sale of 1895 included the Brentford Estate adjoining, but he had never sold any of that estate in 1882-4. He purchased the Ealing Park Estate for Mr. Holland.

His Lordship, in giving judgment for the plaintiff, with costs, for £70 13s. 4d. and £20 expenses, said he was clearly of opinion that 2½ per cent. less one-third was to be charged.

Counsel for the plaintiff: Mr. W. Whately and Mr. Scott; counsel for the defendants: Mr. Rufus Isaacs.

Downes and Co. v. Chapman.

Marylebone County Court, January 21, 1896.—Before the Deputy Judge.

Reported *ESTATES GAZETTE*, Vol. xlix., p. 164.

Claim to commission by two different agents—Interpleader issue—Practice.

The plaintiffs were estate agents carrying on business at Cricklewood, N.W., and their claim was for £16 5s., the amount of commission which they alleged to be due to them for the introduction to the defendant of a purchaser of two houses known as Oakhurst and Cleveland Cottages, Cricklewood.

From the correspondence put in it appeared that the defendant admitted that the plaintiffs had earned the commission, but refused to pay same, owing to his having received an account for commission from another firm of estate agents, Messrs. Done and Frost, of Cricklewood, in respect of the same sale. Under these circumstances the defendant applied for *ex parte*, and obtained an order for an interpleader issue, paid the amount claimed into court, and sought to leave the matter to be fought out between the plaintiffs and Messrs. Done and Frost. Upon these facts coming to the knowledge of the plaintiffs they served a notice upon the defendant to set aside the order for the interpleader issue.

In support of the application, Mr. Mellor contended that, upon the authority of "*Greathore v. Shackle*," claims for commission made in respect of the same sale

by different agents were not the subject for an interpleader issue, and also dealt exhaustively with the interpretation to be placed upon the various rules dealing with the subject of interpleader issues.

On behalf of the defendant it was contended, amongst other things, that the plaintiff by consenting to an interpleader summons being issued had in fact consented to an issue. Further, that the case of "*Greatorrex v. Shackle*" had been overruled or rendered of no effect by reason of the new County Court rules on the subject of interpleader.

In giving judgment, the Judge said that he was clearly of opinion the two claims were quite separate and distinct, and therefore did not form the subject of interpleader at all, and that he felt bound to follow the decision in "*Greatorrex v. Shackle*," as he did not think the new County Court rules on the subject were intended to overrule such decision, and even in face of the new rules he must hold that the claims were not the subject matter for interpleader—the wording of the section "such debt" showed to his mind that it was not applicable to a case like the present where there were two debts, and under the circumstances he must order the interpleader issue to be set aside, with costs, leave to appeal being refused.

The defendant's solicitor said that under the circumstances he must admit the plaintiffs' claim, and judgment was thereupon given in favour of the plaintiffs for £16 5s. and costs.

The question as to Messrs. Done and Frost's claim against the defendant was not dealt with, they being discharged from the interpleader proceedings, with costs.

Alce v. Fisher.

Queen's Bench Division, February 2, 1897.—Before Mr. Justice Bruce.

Reported *ESTATES GAZETTE*, Vol. xlix., p. 203.

Introducing purchasers at auction sales—Rate of commission—Custom.

In this case Mr. William Alce, land agent and surveyor, of Hanwell, was the plaintiff, and he claimed £73 10s. for commission said to have been earned in respect of the introduction of purchasers on the sale of the Drayton Park Estate, Hanwell, belonging to the

defendant, Mr. William Albert Fisher, auctioneer and surveyor, of 16, Finsbury Pavement, E.C.

Mr. William G. Alce, the plaintiff, said he carried on business as an auctioneer, surveyor and valuer, at Hanwell, and had two offices in that suburb. Early in 1896 he heard that Mr. Fisher had purchased Drayton Park Estate, and as witness lived on that estate and had been working on it and sold and let houses there for the previous 18 months, he called on Mr. Fisher and had a conversation with him. Defendant told him he was pleased to see him, and that the persons from whom he had purchased the estate had recommended witness to him. He also expressed his intention of coming down to see him about it. On the following Saturday witness met him on the estate in the roadway, and they discussed business. They went over the estate, which comprised 29½ acres, and Mr. Fisher said he should have it properly surveyed and set out with a view to preparing particulars and plans for a sale. Witness had various other interviews with him, twice at his own house, and Mr. Fisher, between May 8 and 20, gave him about 25 printed particulars of sale, eight posters, and sent him by hand an ordnance map on which the estate had been plotted out by his own surveyor. He showed it to people in his office. There were two large notice boards up on the estate, and underneath, on a slip, witness's name and address had been painted, with the sanction of the previous owner. Witness obtained permission from Mr. Fisher for his name to remain there, and also to repaint another board and put his name on. Witness saw many persons on the matter, and impressed on them the desirability of buying portions of the estate. He also took Mr. Fisher over the best part of Hanwell and told him the rents of the houses, etc. The sale took place on May 20, by public auction, and just before the sale began, witness handed Mr. Fisher, outside the marquee, a written list containing the names of Messrs. Hyatt, Pargeter, Baldwin and others, to whom he had well recommended the sale. Inside the tent witness handed him another slip containing the name of Messrs. Kasner and Parsons. Mr. Kasner bought four plots for £400. A syndicate consisting of Messrs. Hyatt, Kasner, Pargeter and Griffin, purchased 28 plots for £2,300, after the bidding had ceased, witness being commissioned to make the offer. Mr. Baldwin also bid £250 for

three plots and they were knocked down to him. Witness went up after the sale and offered to purchase two plots at £80 each, but Mr. Fisher wanted £90, and said "You are doing very well," meaning his introduction of purchasers, and the commission he had earned. Thereupon witness agreed to £90, and signed the contract, but did not pay any deposit money. A few days afterwards he met Mr. Fisher and asked the price of other plots, but he said they were on offer to another person, and he had no particulars to spare. He also said witness had better send the list of names on which he claimed commission to his solicitors. Witness did so, and received a reply on May 27, 1896, cancelling his contract, and denying that anyone of the gentlemen named became purchasers through his introduction.

Cross-examined: There was no suggestion that the names of purchasers he introduced should be handed up prior to the auction. He did it as the proper thing. He did not ask whether he would be paid commission on private sales.

Mr. H. A. Hartley, solicitor to the plaintiff, said he saw Mr. Alce hand the lists of names to Mr. Fisher before the auction.

Mr. Henry Kasner, a purchaser, said the estate was brought to his notice by Mr. Alce 10 days before the sale, and in consequence he went to the sale and became a purchaser.

Mr. Walter Hyatt and Mr. E. Thomas Pargeter, architect and surveyor, gave similar evidence. It was stated that Mr. Griffin, one of the syndicate, was an estate agent.

Mr. D. Conyngham Tickle, land agent, of Greenfield Road, Tottenham, said the usual rate of commission charged for introducing purchasers to auction sales was $2\frac{1}{2}$ per cent. It was not usual to have an agreement. He had been employed by most London firms of auctioneers.

The learned Judge observed that it must be a very profitable business.

Mr. Henry Iles, surveyor and valuer, Southend-on-Sea, said it was the custom to pay commission to persons bringing customers to auction sales, and the rate varied from $2\frac{1}{2}$ to 10 per cent.

For the defence, Mr. Rose-Innes urged that contractual relations had not been established between the parties.

270 COMPENDIUM OF COMMISSION CASES.

His Lordship said he agreed that it was very slight, but he should leave the case to the jury.

Mr. William A. Fisher, surveyor and auctioneer, the defendant, said he bought building estates and cut them up into small plots for sale. Witness first asked the plaintiff why the estate had not gone off better, and he could give no satisfactory explanation, but said there had been offers. Witness said that if he submitted the offers before the auction and introduced his purchasers and they bought at the auction and not privately, he would pay him the usual commission and give him a letter to that effect if he liked. Mr. Alce said it was quite unnecessary. Witness denied that he authorised plaintiff to do any work for him. Before the sale, Mr. Alce came up to him while he was speaking to Mr. Baldwin and handed him the long list of names, including the name of Mr. Baldwin, written in pencil. Mr. Baldwin's purchase had been forfeited. The little slip of paper containing Kasner's name was handed to him by the plaintiff after Mr. Kasner had purchased four lots. The syndicate ultimately offered £2,680 for 28 plots on condition that Mr. Kasner's purchases were merged in them. Mr. Alce was on the fringe of the group of four. As to Mr. Alce's purchase of the two unsold lots, witness said he would be doing very well if he paid £90 each for them. Witness spent a considerable sum in advertising the estate, and kept two surveyors living within 200 yards of it.

Mr. Harvey Curry, solicitor, said he acted at the sale, and the final offer of the syndicate was not made by the plaintiff.

Mr. Alfred G. Brown, clerk to the defendant, said the small slip was handed to Mr. Fisher after Mr. Kasner had purchased his four lots. Mr. Fisher handed the slip to witness, who, considering it a most unusual thing to be handed up, made a note on it to the effect that it was handed in after the property had been knocked down to Mr. Kasner.

The jury returned a verdict for the plaintiff for the items claimed, with the exception of commission on the purchase made by Mr. Baldwin.

His Lordship accordingly gave judgment for £67 10s. and costs.

Counsel for the plaintiff : Mr. R. O. B. Lane ; counsel for the defendant : Mr. P. Rose-Innes and Mr. Scott.

Hoddell v. Hedges.

Bristol County Court, March 18, 1897.—Before his Honour Judge Austin.

Reported *ESTATES GAZETTE*, Vol. xlix., p. 483.

Marking a register—An introduction must be effective.

This was a case in which the plaintiff, James Hoddell, auctioneer and estate agent, of Alexandra Road, Clevedon, claimed £41 5s. commission from Frederick Hedges, builder, of the same town, upon the sale of a house.

Mr. Hedges had asked the plaintiff to sell a house name Carleon, in Prince's Road, Clevedon. The house was put up for sale by auction, but the reserve price was not reached, and it was left to be sold by private treaty. The plaintiff's firm brought the house under the notice of five or six clients, but no sale was effected. Eventually, however, Mrs. Campbell, of Weston-super-Mare, came to the plaintiff's place of business and obtained the names of several houses to be let, and amongst these, said the plaintiff, was that of Carleon. Mrs. Campbell did not return to the office, but sent her maid, to whom Messrs. Hoddell handed a printed register, in which was a description of Carleon, and this description had been specially marked, as were also descriptions of several other properties. As regards the attempt to effect a sale by auction, the arrangement between the parties was that if it proved successful the plaintiff should receive the usual commission, but if not, then out-of-pocket expenses only. Mr. Hedges paid the plaintiff £4 3s. for out-of-pocket expenses, but no fee whatever for the trouble taken, and Mr. Hedges had paid Messrs. Lalonde Bros., of Weston-super-Mare, the commission on the sale, contending that that firm had been the successful agents in actually introducing and selling the house.

The plaintiff and his two sons were examined at some length, and maintained that they had mentioned the house, amongst others, to Mrs. Campbell, and that they had marked the register which they considered sufficient introduction to entitle them to commission.

Mrs. Campbell was called into the witness box, and declared that the house Carleon had never been mentioned to her by the plaintiff's firm, and that she had never referred to the marked register. The first to name the house to her was a friend of hers who had heard of it from Messrs. Lalonde Bros., to which firm

she went for further information, and negotiations were ultimately successfully carried through.

His Honour, in giving judgment, said that what the plaintiff had done was not sufficient to bring the house before Mrs. Campbell's mind, and, to recover, an agent must be the effective means of bringing the property before the notice of the purchaser. The plaintiff had failed to do this, and there must be judgment for defendant, with costs.

Ogden and Sons v. Belcher.

Kingston County Court, April 9, 1897.—Before his Honour Judge Lushington.

Reported ESTATES GAZETTE, Vol. xlix., p. 648.

A "board" a sufficient introduction.

This action was brought by Messrs. W. M. Ogden and Sons, auctioneers, estate agents and surveyors, of Wimbledon, to recover the sum of £17 18s., commission from Mr. W. Belcher, upon the sale of a lease.

From the evidence given, it appeared that in the month of January, 1896, the defendant instructed the plaintiffs by letter to sell the lease of No. 40, Alexandra Road, Wimbledon, where he then resided, together with a piece of freehold land adjoining, for the sum of £800, and to erect a board in front of the premises for the purpose. The plaintiffs accordingly put up their board and sent orders to view the premises to various persons, amongst others to a Mrs. Bignold, who in May purchased the house, together with a portion of the land adjoining, for £700.

Mrs. Bignold, in her evidence, admitted that she received an order to view several houses from the plaintiffs, but having destroyed it, could not recollect whether the house in question was amongst them. On May 6, whilst passing along Alexandra Road, she noticed the plaintiffs' board outside the house in question. She went to the house and saw defendant's wife, who promised that defendant should forward particulars to her, which he did on the following day. She afterwards saw defendant, and agreed to purchase the house for £550. She was afterwards induced by the defendant's solicitors to buy a 20ft. plot of freehold ground adjoining for £150.

In cross-examination by Mr. Elliott, she admitted having inspected the house some 12 months previously,

but the price asked being too high, she had given up all idea of purchasing. She denied that the negotiations at that time were merely postponed; neither did she, when she saw the board, recollect the former visit until she had entered the house.

Mr. Elliott, for the defence, contended that the plaintiffs not having conducted any of the negotiations, and having only erected the board and charged for the same, did not entitle them to recover.

His Honour gave judgment for the plaintiffs for the amount claimed, remarking that the fact of their having done nothing beyond erecting the board did not affect the matter. If the board had not been there no enquiries would have been likely to be made, and in a great number of cases, auctioneers were put to the trouble of erecting boards and doing other work for which they received no remuneration, and they were entitled to take the smooth with the rough.

Counsel for the plaintiffs: Mr. R. W. Glasgow; counsel for the defendant: Mr. G. Elliott.

Rogers v. Clarke.

Westminster County Court, April 30, 1897.—Before his Honour Judge Lumley Smith.

Reported ESTATES GAZETTE, Vol. xlix., p. 794.

Bringing about a sale—First introduction not always sufficient.

This was a remitted action from the High Court, in which the plaintiff, Mr. Alfred Rogers, a house agent, carrying on business at Walton-on-Thames, sought to recover the sum of £80 as commission on the sale of the defendant's house.

The plaintiff, Mr. Alfred Rogers, was called and said that in the latter part of April, 1896, it came to his knowledge that the house in question, which was known as Colby House, Walton-on-Thames, was likely to be in the market, and accordingly he wrote a letter to the defendant offering to try and find a purchaser. On May 4 he had a personal interview with the defendant, and having received from him full particulars of the property, said he thought he could find him a purchaser. On the same day witness wrote to Mr. Foote, who was one of his clients, and gave him full particulars, and on a subsequent date he took him to see the place. Some time later Foote purchased through Messrs. Waterer and Sons, but he (plaintiff) contended

that he had fully earned his commission, inasmuch as he was the first person to introduce Mr. Foote.

His Honour said his view of the law was that the first introduction carried the agent a long way towards getting his commission, but it did not necessarily carry him the whole of the way.

For the defence, Mr. Samuel Foote was called, and said he had known the house in question for some years past and had made previous offers for it. In May, 1896, he met the plaintiff in the village and told him that he did not want the house and would have nothing to do with it, as at that time he had no intention of buying the place. Some time afterwards he had an interview with Mr. Waterer, another agent, on a separate matter and the premises in question were again discussed. After some further negotiations he (witness) agreed to purchase through Messrs. Waterer for £3,200, and signed a contract to that effect. Late in April, or early in May he (witness) received letters of introduction both from Rogers and Waterer, but he threw them both in the fire and took no notice of them. From first to last he never made any offer through the plaintiffs and nothing that they said or did had any influence upon him.

Mr. John Waterer, of the firm of Waterer and Sons, of Walton and Chertsey, and the defendant, Mr. B. F. Clarke, gave evidence.

In giving judgment, his Honour said there was no doubt that the plaintiff had done something in the matter, but the whole question was as to whether or not what he had done had brought about a sale. On the whole, he thought the plaintiff had failed to prove that he had brought about the relation of buyer and seller, and, therefore, judgment would be for the defendant, with costs.

Counsel for the plaintiff: Mr. Scarlett; counsel for the defendant: Mr. Roberts.

Nicholas and Co. v. Malet.

Queen's Bench Division, May 17, 1897.—Before the Lord Chief Justice and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. xlix., p. 888.

Liability to pay commission disputed—Purchaser alleged not to be known to defendant.

In this action Messrs. W. R. Nicholas and Co., of 60, Pall Mall, and Reading, were plaintiffs, and Mrs.

N. St. Lo Malet, of Ray Park, Maidenhead, was defendant.

The claim was in respect of commission earned by the plaintiffs in respect of the sale through their introduction of Castleman's Farm, between Twyford and Maidenhead, from the defendant to Mr. G. A. Tonge.

It appeared that after considerable negotiation had taken place between the plaintiffs, acting as Mrs. Malet's agents, and Mr. Tonge's agents, Mr. Tonge, without the plaintiff's knowledge, inserted an advertisement for property in the newspapers, in terms which corresponded with the property which Mrs. Malet was endeavouring to sell. Mr. Tonge requested a friend of his, a Mr. Simpson, to negotiate for the purchase of the property, which he did with the result that the contract was made out to Mr. Simpson at a lower price than Mr. Tonge supposed the defendant would sell for if she knew that it was he (Mr. Tonge) who was the purchaser, as he was the owner of the adjoining property. The conveyance was, however, ultimately made to Mr. Tonge, but the defendant disputed her liability to pay commission, upon the ground that the sale was to Mr. Simpson through an advertisement, and not to Mr. Tonge or through the plaintiff's introduction at all.

At an early stage of the case the Lord Chief Justice intimated to the defendant's counsel that the defendant should reconsider her position. She, however, elected to proceed with the case, and after an exhaustive summing up the jury returned a verdict for the plaintiffs for the sum claimed, viz., £112 10s., with costs, and the learned Judge certified for a special jury.

Counsel for the plaintiffs: Mr. Kemp, Q.C., and Mr. A. H. Spokes; counsel for the defendant: Mr. Barker.

Geen v. Lound.

Southwark County Court, May 25, 1897.—Before his Honour Judge Addison.

Reported ESTATES GAZETTE, Vol. xlix., p. 888.

Introducing purchaser at auction sale—Commission recoverable.

Messrs. Philip and George Geen, auctioneers, surveyors and estate agents, of 55, Waterloo Road, S.E., sought to recover from Mr. C. Lound (Messrs. Lound

and Howitt, 13, Bedford Row, W.C.) £18 2s. 6d., commission upon the introduction of a purchaser of property belonging to the defendant, situate at Brand Street and Osnaburgh Cottages, Holloway.

The plaintiffs' case was that in 1895 they were employed to collect the rents, etc., on the defendant's property mentioned, and afterwards were asked to find a purchaser. In February, 1897, they introduced Mr. Barsht, a builder and estate agent, who made an offer of £750. This was telephoned to the defendant, who replied that he could not accept it as the auction was shortly coming off, but requested them to allow the applicant to attend the Mart, adding that if he did so and bought the property, they (the plaintiffs) would not be the losers of their commission. Mr. Barsht accordingly attended the auction and purchased the property for £725. Plaintiffs then asked for their commission, but defendant replied that he did not think he ought to pay the whole amount. He suggested the reference of the matter to a professional gentleman. Plaintiffs submitted two names, but defendant said he preferred another. Plaintiffs refused to go further in the matter, and sent in their account.

Mr. Barsht was called, and said the plaintiffs were the first to introduce the property to him, and he attended the auction at their request.

The defendant said that about 10 days before the auction he received a message from the plaintiffs, saying that they had a buyer for the property, and asking whether if he bought, would he (defendant) pay them the commission. Defendant replied that he could not do that, but if they gave him the name of their applicant and he purchased the property, he would give them an honorarium. They acquiesced, but said they would not then disclose the name, making a similar reply after the sale. He then told them they had not carried out their arrangement, and he did not think they were entitled to anything. He, however, offered to submit it to a gentleman, but the reply was not satisfactory.

His Honour said he thought the plaintiffs had put before him a plain, straightforward case, and gave judgment for them for the amount claimed for commission, with costs.

Counsel for the plaintiffs: Mr. W. R. Moore; counsel for the defendant: Mr. Scott.

May and Philpot v. Smith.

Lambeth County Court, May 27, 1897.—Before his Honour Judge Emden.

Reported *ESTATES GAZETTE*, Vol. xlix, p. 927.

Letting house furnished or unfurnished—Custom of trade.

In this case Messrs. May and Philpot, auctioneers and house agents, of Brixton, sued Mr. S. Smith, a chemical broker, of Fenchurch Avenue, for commission on the sale, by private treaty, of his furniture and on letting his house unfurnished.

Both members of the plaintiffs' firm gave evidence as to Mrs. Smith calling at their office with reference to the letting of her furnished house, 6, Thornton Avenue, Clapham. Her first call was on January 19, when her name was entered upon the register, and it was explained that she would, in the case of the house being let, be liable for the usual commission. On the 29th of the same month Mrs. Smith called and stated that she had let the furnished house through an advertisement which she had inserted in a newspaper. Mr. Goodfellow, of 79, Lombard Street, stated that he entered into negotiations with Mrs. Smith after obtaining his information from the plaintiffs. He agreed to buy the furniture for £550 and take a tenancy of the house as unfurnished.

Mr. James F. Field, auctioneer and surveyor, of 54, Borough High Street, President of the Auctioneers' Institute, stated that in his opinion, the plaintiffs were, by custom, entitled to commission on the sale of the furniture and for letting the house unfurnished, although they only gave information to the purchaser with the view to his taking the house furnished.

Mr. W. P. Goulding, of the firm of Cooper and Goulding, 41, Moorgate Street, E.C., gave similar evidence.

The defendant, in his evidence, stated that in the discussion between himself and the plaintiffs nothing was ever said about the sale of the furniture.

Mrs. Smith gave corroborative evidence.

His Honour held that the plaintiffs were not instructed to sell, and were only entitled to judgment for commission on letting the house furnished. He gave judgment, therefore, for this part of the claim only, amounting to £3 10s.

Counsel for the plaintiffs: Mr. Noble; counsel for the defendant: Mr. Dodd.

**Church v. The Hotel Provence Company,
Limited.**

Queen's Bench Division, July 5, 1897.—Before Mr. Justice Wills.

Reported *ESTATES GAZETTE*, Vol. 1., p. 58.

Indirect introduction—"Chain" complete.

This was an action brought by Mr. Arthur Church, architect and surveyor, against the Hotel Provence Company, Limited, to recover £600 as commission on the sale of the Hotel Provence, Leicester Square. The defendants denied the liability.

Mr. Dickens, in opening the case for the plaintiff, said that in July, 1896, the Hotel Provence was for sale, and Mr. Vaughan, one of the directors, mentioned the matter to the plaintiff, who knew some persons who were looking out for a good house. The plaintiff wrote to the company, informing them that he knew of a person who was likely to purchase, and suggesting that if the house was sold through his introduction he should receive a commission of £1,000, and, in reply, the company forwarded him a commission note to the effect that in the event of his selling the house for £50,000 he should receive a commission of £1,000. It also provided that if the directors accepted a smaller sum the commission should be reduced by 5 per cent. on the difference between £50,000 and the smaller sum accepted. Eventually plaintiff saw Mr. Morley, who told him he was prepared to find a purchaser if he would share the commission with him. The plaintiff agreed to this, and Mr. Morley introduced Mr. Kirk, who purchased the house for £42,000. The suggestion now made on the part of the defendants was that Mr. Vaughan really introduced Mr. Kirk, that he had put forward the plaintiff as a kind of nominee to obtain the commission which he, as a director, could not get himself, and that he would eventually share the commission. There was not the slightest ground for that suggestion. It was true that many months before the sale Mr. Vaughan had spoken to Mr. Kirk about the house, but that gentleman refused to have anything to do with it, as the price then asked was £50,000. He (the learned counsel) submitted that the house was sold on the introduction of the plaintiff, and that therefore he was entitled to recover the commission claimed.

The plaintiff stated that in July, 1896, he saw Mr. Vaughan, whom he had known for some time, and had a conversation with him with reference to the Hotel Provence. Afterwards he endeavoured to find a purchaser, and received from the defendants the commission note on which he now sued. He saw Mr. Morley, auctioneer and surveyor, of Earl's Court, and that gentleman eventually introduced Mr. Kirk, who made an offer of £42,000 for the house. That offer was accepted, and the contract was concluded.

In cross-examination, plaintiff said Mr. Vaughan supplied him with the particulars of the Hotel Provence.

In re-examination, the plaintiff denied that Mr. Vaughan had any interest whatever in the commission which he was now claiming.

Mr. Kirk said several months prior to August, 1896, he spoke to Mr. Vaughan about the Hotel Provence. Mr. Vaughan said the price asked for the house was £50,000, and when he heard that he refused to have anything to do with it. In August last he made an offer of £42,000 for the house, and it was accepted.

In cross-examination, the witness said he knew Mr. Vaughan pretty intimately, and it was from that gentleman he first heard of the Hotel Provence being for sale. Mr. Vaughan supplied him with a statement of the trade, etc., of the hotel for his (witness's) broker. He told Mr. Vaughan that if a lower price than £50,000 was asked for the house he might consider it. Prior to August 28 he had never seen or had communication with the plaintiff. Before he saw Mr. Morley about the house, he had told Mr. Osthie, his broker, that if he could secure the house for £42,000 he would buy it.

Mr. Cohen: Had the intervention of Mr. Morley or anything he said anything to do with your buying the place?—I would have bought it independent of that.

Did Mr. Morley or the plaintiff have any influence in inducing you to buy the house?—None whatever.

Re-examined by Mr. Dickens: Did you ever make any offer to Mr. Vaughan for the purchase of this house?—I do not think I did.

Was the first offer you made for this house the offer you made to Mr. Morley?—I think I may have previously said that if the price was about £40,000 I would entertain it.

Mr. Morley (Messrs. Morley and Letts, auctioneers and valuers, Earl's Court, W.) gave evidence to the

effect that on the evening of August 27 Mr. Kirk told him he could make an offer of £42,000 for the hotel. On the following day he accompanied Mr. Church, sen., and Mr. Kirk to the office of the liquidator, when the offer of £42,000 was made.

This closed the case for the plaintiff.

Mr. Edmund W. Cathie, public-house broker, carrying on business in Hart Street, Bloomsbury, was called on behalf of the defendants. He said he had been acquainted with Mr. Kirk for many years, and had acted as his broker. In August, 1896, he was in possession of the particulars relating to the hotel. He obtained them from Mr. Hawkins.

Mr. Justice Wills said that meant that the witness received the particulars from the plaintiff, because the correspondence showed that Mr. Hawkins held a commission note from the plaintiff.

Mr. Cohen, on behalf of the defendants, submitted that the plaintiff was not entitled to commission. According to Mr. Kirk's evidence, what the plaintiff and Mr. Morley did had no influence in inducing him to buy the house.

Mr. Justice Wills, without calling upon counsel for the plaintiff, said that, in his opinion, the plaintiff had done quite enough to entitle him to his commission. Therefore there would be judgment for him for £500 and costs.

Counsel for the plaintiff: Mr. Dickens, Q.C., and Mr. Abrahams; counsel for the defendant: Mr. Cohen and Mr. Gedge.

Bone and another v. Johnston.

Hants Assizes, June 30, 1897.—Before Mr. Justice Lawrance.

Reported *ESTATES GAZETTE*, Vol. 1., p. 58.

Disputed introduction—Restrictive covenants.

In this case Messrs. Bone and Pratt, house agents, of Boscombe and Bournemouth, sought to recover the sum of £137 10s. as commission on the sale of the lease of a property, Theydon Lodge and grounds, at Boscombe, belonging to Mrs. Johnston.

It was stated that the defendant consulted the plaintiffs with respect to the sale of the lease of her property, and at the time she could not put the property to any use she liked. The rental was £150 a year, and

£3,000 was about the capital value, but in consequence of the development of Boscombe the property increased in value, and when the defendant originally placed the matter of disposing of the property in the hands of Messrs. Bone and Pratt, she asked £5,000 for it, raising it subsequently to £5,250, and eventually it was sold for £5,000, and the charge for commission was $2\frac{1}{2}$ per cent. on the first £5,000, and $1\frac{1}{4}$ per cent. on the remainder, which was the agreed rate and the usual amount. The defence was that the property was not sold through the action of the plaintiffs, but of other agents, whose commission had been paid. In 1891 a gentleman named Beckett, who had speculated in land at Boscombe, and had laid out a lot of property and built shops, and was developing the neighbourhood, had introduced to him the defendant's property. At that time Mr. Beckett said the price was much too high, particularly as the building rights over it were limited, and he could not entertain the offer. Early the next year Mrs. Johnston lowered the price to £5,000, and in the spring of that year Mr. Beckett offered £3,000, which was as far as he was disposed to go. That offer was declined, and for a time the matter rested, but Mr. Beckett knowing that the value of the land would be much increased, got hold of the restrictive covenants from the person possessing them, Lady Shelley, and so obtained the right to build shops. Having done that, Mr. Beckett was in a much stronger position, because, having bought the land, he could do as he liked, and build shops. The plaintiffs, having heard of this almost at the same time, communicated with the defendant, and Mrs. Johnston was annoyed at his buying up the restrictive covenants behind her back, as she thought she should have bought them. After that she appeared to have been unwilling to sell to Mr. Beckett unless he paid a higher price than anyone else. Subsequently, in 1895, Mr. Beckett again asked the price of the defendant's property, and the defendant said £5,500. He said that was too much, as then, though he had the restrictive covenants, she was asking more than before. In 1895 the Wilts and Dorset Bank entered into negotiations with Mr. Beckett for the purchase of the land, as it was wanted for their bank, and the property was purchased for £6,000, of which Mr. Beckett had to pay £3,100, and the bank £2,900. The property was sold through Messrs. Rebeck Bros.

to the bank, because Mrs. Johnston did not like Mr. Beckett, and though it was not sold in Mr. Beckett's name, he was one of the parties to it. Considerable correspondence had passed between the plaintiffs and the defendant, and the latter was warned that she would be liable to the plaintiffs for their commission if she sold the property to the bank. The only question for the jury was, through whose introduction the property was sold.

Mr. Pratt was called as a witness, and while he was giving evidence the question arose as to how the restrictive covenants were obtained by Mr. Beckett, and witness said he did not know how it was done.

Mr. Archibald Beckett was called, and said he was a considerable owner of house and shop property at Boscombe, and was given credit for taking a larger share in developing Boscombe than anyone else. He had attended on subpoena. He bought the ground rents of the adjoining properties and the restrictive covenants referred to.

Lord Coleridge, for the defence, said the point at issue was a very simple one, whether the plaintiffs did, or did not, introduce the purchaser of Theydon Lodge to the defendant. The property had for many years been placed by Mrs. Johnston on the books of all the agents in Bournemouth. It was property calculated to increase in value, as it did, and Mrs. Johnston was in no hurry to sell it, but was desirous to get the best price she could, and quite able to wait to obtain it. In 1891 Mrs. Johnston placed the house on the books of Messrs. Bone and Pratt, as well as others in Bournemouth and neighbourhood. The consequence of that was that continual application was made to Mrs. Johnston by the plaintiffs and other agents, but she held out for the enhanced price which she fancied she would get the longer she waited, and she was justified in her opinion. The position was that Sir Percy and Lady Shelley could prevent this Theydon Lodge being turned into shops. The property was in the main street, with shops in the near neighbourhood, and the value increased if it could be turned into shops. Mrs. Johnston would have been willing to purchase the right of being relieved of these restrictions. But as she thought Mr. Beckett went behind her back and obtained these covenants, and could say to her that she should not turn these premises into shops, she took umbrage at this,

and refused all Mr. Beckett's offers. The time came when Mr. Beckett thought it a good time to sell the restrictive covenants to the Wilts and Dorset Bank; but before that the bank had an eye on the site for bank premises. It was a corner frontage very valuable for a bank. Instead of Mr. Beckett approaching the bank on the matter, the bank authorities, having had an eye on the site for a new bank for a considerable time, approached Mr. Beckett, knowing that he had the restrictive covenants. Negotiations between Mr. Wyatt, on behalf of the bank, and Messrs. Rebbeck Bros., for Mrs. Johnston, took place, and the property was purchased by the bank, but throughout the negotiations Mr. Beckett's name was never mentioned.

Mr. C. W. Wyatt, house agent, Boscombe, and Mr. Henry Kingston, manager of the Boscombe branch of Messrs. Rebbeck Bros., of Bournemouth, gave evidence.

His Lordship said the real question, and the only one, was whether plaintiffs were the persons who introduced the purchaser to the vendor. They had to say whether the relationship between the purchaser and the vendor was brought about by anything done by the plaintiffs. It had been shown that the property was purchased by the bank. Mrs. Johnston only looked to the bank, and would not have anything to do with Mr. Beckett.

The jury returned a verdict for the defendant, and judgment was given accordingly.

Counsel for the plaintiffs: Mr. J. A. Foote; counsel for the defendant: Lord Coleridge, Q.C., and Mr. Clavell Salter.

Edwards v. Lord Carbery.

Queen's Bench Division, August 6, 1897.—Before Baron Pollock and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. 1., p. 239.

Plaintiff land agent to defendant—Alleged sale in that capacity only—Right to commission disputed.

The plaintiff, who was employed by the defendant as his land agent and steward, sold the Laxton Hall Estate, on behalf of the defendant, and at his request, for £40,000. For his services, which it was submitted were quite distinct from his duties as agent, the plaintiff claimed the usual commission, which the defendant refused to allow, hence this action. In defence it was

submitted that the plaintiff had sold the estate in his capacity as agent to the defendant, and was not entitled to recover.

Mr. Henry Edwards, the plaintiff, said he carried on business as a land agent and surveyor at Tinwell, near Stamford. He had been a licensed valuer for 20 years, and had also a practical knowledge of farming. In August, 1889, he was appointed land steward to the Laxton Estate by George, Lord Carbery, uncle to the present Lord Carbery, at a salary of £200. He continued his services under William, Lord Carbery, who died in November, 1894, and was succeeded by the defendant. Upon the succession of the present peer, witness became agent to Victoria, Lady Carbery, on January 1, 1895. In the following month witness's salary as agent to Lord Carbery was reduced to £100. He was subsequently instructed to make certain valuations on the different estates. On the Castle Freke Estate witness valued some heirlooms. The total of his valuation was £4,058 16s. 6d., and as a remuneration for his services he claimed £60 17s. 6d. Having previously intimated his intention to dispose of the Laxton Estate, Lord Carbery wrote on June 16, 1895, to the effect that he had instructed Messrs. Richardson, land and estate agents, of Stamford, to prepare particulars. Witness was asked by the defendant to render Messrs. Richardson every possible assistance, and was informed that when the particulars had been printed copies thereof would be distributed amongst all the leading agents in the country, and that the usual fee would be paid to whoever secured a purchaser. Witness, in reply to the letter, reminded his lordship that his arrangement with Messrs. Richardson would entail considerable expenditure without any corresponding advantage. He, however, assisted Messrs. Richardson in drawing out the particulars, but subsequently negotiated with a Mr. Hornsby for the sale of the estate. Mr. Hornsby's offer was communicated to the defendant, and as a result of witness's efforts, the estate was eventually sold to that gentleman for £40,000. On October 13, 1895, witness had an interview at the Euston Hotel, London, with Lord Carbery, who was abroad during the negotiations with Mr. Hornsby. His lordship congratulated witness upon his success in selling the Laxton Estate, adding that it was his intention to make him a present. To this witness replied that he was

entitled to the usual fee in accordance with the terms mentioned in his lordship's letter of January 16. The defendant, in reply, said he would communicate with his solicitors, and witness subsequently received a letter from Messrs. Walford, solicitors, of Stamford, informing him that as Lord Carbery's agent, he was not entitled to a fee. Witness was afterwards offered £260 for his services, but this sum he refused to accept, claiming commission at the rate of $1\frac{1}{2}$ per cent.

Mr. Channell, Q.C., on behalf of the defendant, referred to the correspondence to show that it was clear that the plaintiff was never employed by the defendant to sell the estate. The defendant's intention was to place the matter in the hands of the leading land agents, thinking that he would be more likely to secure a purchaser through them than through a person in the position of the plaintiff. He would not, if he had employed the plaintiff, have consented to the same terms as regards the commission. The plaintiff, nevertheless, thinking he might make something out of it, exerted himself to find a purchaser. The defendant was perfectly willing to pay him something for the service rendered.

The evidence of the defendant, who was ill, was taken on commission and read in Court. The witness said that by leading agents he meant the big men, like Lumleys, Walton and Lee and Hamptons. He did not include the plaintiff. At the interview at the Euston Hotel he told the plaintiff that he had no right to make any charge, but that anything he had must come as a present from the witness.

The jury found for the plaintiff for the full amount claimed.

Counsel for the plaintiff: Mr. Lawson Walton, Q.C., and Mr. A. Powell; counsel for the defendant: Mr. Channell, Q.C., and Mr. Danckwerts.

Godwin and Hughes v. Hart.

City of London Court, August 12, 1897.—Before Mr. Julian Robins, Assistant Judge, and a Jury.

Reported *ESTATES GAZETTE*, Vol. 1., p. 316, and Vol. II., p. 178.

Sale of public-house—Double commission recovered.

This action was brought by Messrs. Godwin and Hughes, public-house agents, King William Street, E.C., to recover from the defendant, Mr. David Hart, landlord of the Plough Tavern, Giltspur Street, E.C.,

the sum of £36, the balance of £40, for obtaining a public-house for him and for conducting him into it.

The plaintiffs case was that the defendant, who had been a cabinet-maker, wanted to buy a public-house. He asked them to find him one, and said he would pay a commission of 1 per cent. if they could introduce him to what he required. The house which the defendant was in now was brought to his notice by them, and at their instance he bought it for the sum of £4,100. He only had £200 in cash, and the rest was raised by loans secured by the defendant.

The plaintiffs admitted that before they saw the defendant the former owner, named Ellis, came to them and said that if they could get £4,100 for his house they should receive £100. They then recommended the defendant to take the house, or at any rate introduced him to it. Ellis had paid them the £100, but, as the defendant had agreed to pay 1 per cent., they now sued him, seeing that they did all that was necessary at the change to completely instal him into the house. They denied that it was ever agreed that they were to obtain loans for the defendant.

The defendant's case was that the plaintiffs well knew he had only small capital and that they undertook to find him the necessary loans to enable him to get into the house. That they never did, and he had to raise nearly £4,000 elsewhere. As the plaintiffs did not do what they undertook to do, and as they had received £100 from the previous owner, he declined to pay.

The jury, after some hesitation, returned a verdict for the plaintiffs for the sum claimed.

The Assistant-Judge said that the system of getting commissions from both sides was a most vicious one. The plaintiffs had received £100, and he should hold that, despite the jury's verdict, the present claim was not maintainable in law. The plaintiffs' interest in the matter was incompatible with acting for both the defendant and Ellis, and he should therefore enter judgment for the defendant, with costs.

This judgment was, however, set aside by Mr. Justice Day and Mr. Justice Lawrance in the Queen's Bench Division, on January 12, 1898, and judgment entered for the plaintiff for the full amount claimed, with costs.

Counsel for the plaintiffs: Mr. Blackwell; counsel for the defendant: Mr. Edwin Pollock.

Passingham v. King.

Queen's Bench Division, November 15, 1897.—Before Mr. Justice Kennedy.

Reported *ESTATES GAZETTE*, Vol. I., p. 840.

Vendor accepting purchaser without inquiry—Time not of the essence of the contract.

This was an action for commission on obtaining a contract for the sale of the Albert Edward public-house, Albert Road, Kilburn.

In December, 1896, Mr. Bird, the plaintiff's managing clerk, had an interview with the defendant, who requested him to find a purchaser for the Albert Edward. The plaintiff, on December 30, 1896, introduced to him a Mr. Vine, who paid a deposit of £250 on the purchase money. Mr. Bird prepared the contract, which was duly executed both by defendant and by Mr. Vine, and by which completion was to be on February 11, and, on defendant's instructions, he also took the inventory at the Albert Edward. Subsequently the defendant extended the time for completion of the purchase till May 6, on receipt of a further deposit of £250 from Mr. Vine, a clause being added to the contract which gave the defendant absolute right to retain the deposit and sell elsewhere after that date. The defendant afterwards (on June 10) called at the plaintiff's office and was alleged to have said that he had cancelled Mr. Vine's contract, as he hoped that a brewery company would purchase. On January 1, 1897, the plaintiff had written to the defendant:—

"We beg to inform you that our regular commission to a vendor for licensed property is 1 per cent. upon the purchase money, but as we hope to do future business with you over some of your other houses we are willing to reduce our commission *re* the Albert Edward to £100."

On behalf of the defendant it was contended that this was an agreement to pay commission only on completion of the sale of the property if sold through the plaintiff's introduction, unless the sale went off by defendant's default. The plaintiff admitted that he had taken no trouble to ascertain whether Mr. Vine was a man capable of completing. As a matter of fact, the defendant was still in possession, no purchaser having been found. He denied that he ever said that he had cancelled the contract. He simply said it was at an end,

as the required time had elapsed. He was willing to accept Mr. Vine still.

Mr. Vine gave evidence that he contracted to buy the house simply as a speculation, and with no present means of paying for it. He did not complete, because he could not resell at a profit.

It was urged that the plaintiff could not earn his commission by getting a man of straw to sign a contract. The clause added to the contract had not made time of its essence. Time always is of the essence of such a contract ("Culls v. Gale"). As to the meaning of the word "sale," counsel cited "Bull v. Price." Moreover, if the action was right, it was premature, as the defendant had never cancelled the contract, but was willing to accept Mr. Vine now.

On behalf of the plaintiff "Grogan v. Smith" was quoted, and it was urged that the defendant had accepted Vine as a purchaser, and so prevented the plaintiff from looking elsewhere to find one, and he had subsequently entered into a fresh bargain with Vine behind the plaintiff's back.

His Lordship said that, in his opinion, plaintiff was clearly entitled to succeed. The defendant chose to accept Vine as purchaser without inquiry. There was no evidence that commission was to be payable upon the completion of the sale. The evidence only was that Mr. Bird undertook "to sell" for him. Neither plaintiff nor Mr. Bird ever acquiesced in the new arrangement between defendant and Vine. By that arrangement he chose not to enforce a contract he had got.

Judgment was given for the plaintiff for £100.

Counsel for the plaintiff: Mr. C. A. Russell, Q.C., and Mr. Carrington; counsel for the defendant: Mr. Jelf, Q.C., and Mr. F. Low.

Walton and Lee v. Lord Churchill.

Queen's Bench Division, December 8, 1897.—Before Mr. Justice Bigham

Reported ESTATES GAZETTE, Vol. 1., p. 969, and p. 1003.

A disputed introduction—Business or "presents."

This action was brought by Messrs. Walton and Lee, estate agents, 10, Mount Street, Grosvenor Square, against Lord Churchill, a Lord-in-Waiting to her Majesty, to recover £1,550, the balance of commission

on the sale of the defendant's estate, known as Cornbury, in Oxfordshire. Defendant denied liability.

It appeared that in February, 1894, having heard that the defendant was thinking of selling his large estate in Oxfordshire, known as Cornbury, the plaintiffs wrote and informed him that they had a gentleman who was anxious to purchase such an estate. The defendant called upon plaintiffs, and told them that the price asked for the estate was from £160,000 to £180,000. The plaintiffs prepared the particulars of the estate, and distributed copies amongst the persons who, they thought, would be likely to purchase such a property. On June 25, 1896, Mr. Newman, who was acting for Mr. Du Cros, called upon the plaintiffs, respecting certain properties, and four days later he called again and obtained orders to view several properties, including the defendant's Cornbury Estate. On July 2 the plaintiffs sent the particulars of the property to Sir Jacob Wilson, in order that he might place them before Mr. Hooley. At the request of the defendant the estate was put up for auction on July 7, but it was not sold, as the bidding did not reach the reserve price of £140,000. The following day the defendant called on the plaintiff, and stated that it was probable Mr. Hooley would purchase the property. As a matter of fact Mr. Du Cros purchased the estate for £115,000, and it was admitted that Mr. Hooley was a well-known friend of Mr. Du Cros, both having been engaged in a commercial speculation in connection with the Dunlop Tyre. Plaintiffs contended that the sale was brought about by their introduction, and that after giving the defendant credit for the £210, which he had paid on account of the auction, they were entitled to commission to the extent of £1,550.

Mr. W. Walton, a member of the plaintiff firm, was called, and bore out the opening statement of counsel. He added that after the attempt to sell the property by auction he had an interview with the defendant, who told him that he had seen Mr. Hooley and Sir Jacob Wilson, and that the former was going down to see the property. He suggested to the defendant that he should get Sir Jacob Wilson to accompany Mr. Hooley to Cornbury. The estate was eventually sold to Mr. Du Cros.

In cross-examination witness said he introduced the property to Mr. Newman, who acted for Mr. Du Cros.

He believed that when he gave Mr. Newman particulars of the Cornbury Estate that gentleman remarked that the price was too high for Mr. Du Cros, who did not wish to give more than £100,000. He did not say that Mr. Newman ever told him that he had mentioned the defendant's estate to Mr. Du Cros.

Sir Jacob Wilson, F.S.I., 15, Great George Street, S.W., and Alnwick, stated that after July 2, 1896, he gave Mr. Hooley the particulars of the defendant's estate, and told him that he ought to look at them. Afterwards Mr. Hooley asked him to go down and see the property, as Mr. Du Cros wished him to do so, and he went down with the defendant. He reported on the property to Mr. Hooley.

In cross-examination witness said after the auction he dined with the defendant at the house of a mutual friend. The defendant stated on that occasion that, though his property had not been sold by auction, he thought that Mr. Du Cros would buy it through his friend Mr. Hooley. He saw the defendant in the House of Lords about this matter, and he at once repudiated any liability. At that time he did not know that the defendant had paid the plaintiffs, in addition to their out-of-pocket expenses, 200 guineas for the auction and £100 for preparing particulars.

Mr. W. Walton was further cross-examined.

Re-examined by Sir Edward Clarke, witness said that Sir Jacob Wilson had certainly mentioned the name of Mr. Hooley to him as his friend, and as a probable purchaser before the date of the sale. Sir Jacob Wilson was an old friend of over 20 years standing, and at an interview with Lord Churchill on July 2, witness handed him a letter he was sending to him, which would reach Mr. Hooley as Sir Jacob Wilson's friend. On August 4 his diary stated that he had received information that the contract for the sale had been signed by Mr. Hooley on behalf of Mr. Du Cros. The diary, on June 25, 1896, entered by Mr. Harris, witness's representative, stated that Mr. Frank Newman, of Messrs. Newman and Newman, had called, and said he had been retained as agent on behalf of Mr. Du Cros, who was desirous of purchasing large estates in the Midlands, preferably near Coventry, and that he would give £100,000 or more for anything suitable. Crawley Court and Cornbury were selected, and Mr. Newman took particulars of Cornbury. This was

followed by someone from Messrs. Newman coming for cards to view. On July 28, Lord Churchill sent a telegram saying, "I am in constant communication with the gentleman who introduced Mr. Du Cros. If anything comes of it, I will let you know, to take estate off your books."

Mr. Charles Henry Newman, senior member of the firm of Newman and Newman, Savile Row, estate agents, said in 1896 Mr. Du Cros communicated with his firm, in the month of May, instructing them to find a house on the river, estates in certain counties, and investments of certain kinds in London. At first he thought the estates should be near Coventry, but afterwards it was not so important. He found two river properties at Hampton Wick, for both Mr. Du Cros and his son. He obtained particulars of several properties from Messrs. Walton and Lee, among them those of Cornbury, which he showed to Mr. Alfred Du Cros, who said he would make extracts and speak to his father about it. He went with Mr. Du Cros, senr., to both Maiden Erleigh, near Reading, and Wargrave Manor, before July 7, and had conversations about Cornbury, its accessibility and income, witness telling him he thought the price asked was too high. The plaintiffs first asked £150,000, and then £135,000. Mr. Du Cros said he would not mind giving £100,000. Witness afterwards heard from private sources what was going on, that Mr. Hooley and Mr. Du Cros were making certain business arrangements between themselves.

His Lordship: Did they purchase the estate between themselves?

Witness said he understood that it would not be to his interest to trouble further about the estate, and that Mr. Harvey Du Cros particularly wished to see him, but witness could not give the date. He saw Mr. H. Du Cros before the contract was signed, and that gentleman said he very much regretted that he had not been able to associate witness with the purchase. He showed him a draft prospectus of the Dunlop Tyre Company, and said he could draw his own conclusions.

The Judge: What conclusion did you draw?

Witness: The conclusion I drew was that it had been necessary to do this business either direct with Lord Churchill or Mr. Hooley, with whom he was mixed up.

in business, and that he wished me to stand on one side, which I was only too delighted to do.

The Judge: Was it that it did not suit him to pay a commission?

Witness: Mr. Du Cros would have paid me commission if it was due; having done nothing I did not expect any commission.

By Mr. Bucknill: He had not told Mr. Du Cros that he had no claim, or been settled with. There was no arrangement to share commission with the plaintiffs, and he was surprised at the question. Witness took the particulars of Cornbury to Mr. A. Du Cros, at 14, Regent Street, along with those of Stowe House, and two or three others. His instructions went so far as to select particulars of all suitable properties for Mr. Du Cros. He was certain he mentioned Cornbury to him. He mentioned Lord Churchill in connection with a tyre company to Mr. Harris.

Mr. Frank Newman, partner in the firm of Newman and Newman, said he went to the plaintiffs on June 24 for suitable particulars, which he obtained, and handed to his brother, who said he would go and see Mr. Du Cros. He also obtained an order to view.

For the defence evidence was given by Mr. Ernest Terah Hooley, who said he had purchased some large estates in England. He knew the Hon. Fitzroy-Stuart, and about May 24 obtained from him particulars of the Cornbury Estate. He fixed the date because it was near Whitsuntide, and he took the particulars with him on his yacht at Cowes. On his return he saw Sir Jacob Wilson at his office, and saw the Cornbury particulars in his office. He (witness) remarked, "Hallo! What are you doing with Cornbury?" He told him to wait for a time, and witness took his (Sir Jacob Wilson's) particulars away with him, because they were the second edition. He was seeing Mr. Du Cros every day, having transactions with him, and having been told to buy a good estate for him when he saw one suitable. The Hon. Fitzroy-Stuart first introduced him to Lord Churchill, and witness introduced the latter to Mr. Du Cros at the Midland Hotel. Sir Jacob Wilson, whose opinion he highly valued, made a report for witness on the property, and on the strength of that Mr. Du Cros told him to buy it. He never saw Messrs. Walton and Lee or Mr. Newman in the matter. Sir Jacob Wilson paid his own expenses, and

spent two days at great inconvenience over the matter, and he thought it a great shame that he had received no acknowledgment ; if Mr. Du Cros did not make him a present, he should.

Mr. Alfred Du Cros, son of Mr. Harvey Du Cros, who was the purchaser of the Cornbury Estate, in giving evidence, said he was aware that Mr. Newman was searching for a suitable estate on behalf of his father, and he had accompanied Mr. Newman and his father on a tour of inspection. Mr. Newman's instructions were to find a suitable estate situate somewhere between London and Coventry, and on the direct route to Ireland. It was also a stated condition that the estate should be such as would bring in a fair return for any capital invested. They inspected Maiden Erleigh together, and it did not meet with their requirements. On that occasion, and whilst travelling on the return journey, between Reading and London, the Cornbury Estate was incidentally mentioned by Mr. Newman in the course of conversation. Mr. Newman remarked that he found it most difficult to secure a property strictly in accordance with his father's instructions. He mentioned, among other estates, Cornbury, which he said was a sporting estate, and one which could not be kept up without a very large amount of capital being invested therein, adding that he did not wish to trouble his (witness's) father with such properties as he knew were unsuitable. It was not true that Mr. Newman had shown witness the particulars of the Cornbury Estate as he had stated in evidence, neither did he receive a bundle of particulars as had been suggested. Witness had had one other conversation with Mr. Newman about the Cornbury Estate. This was after his father's offer had been accepted, and the whole matter had been settled. This second conversation took place in Regent Street, Mr. Newman expressing his regret that the negotiations had closed. He remarked that if the property had been purchased through him he could have got it cheaper. Mr. Newman either said he could have got it for £100,000, or that he had it on his books at that amount.

His Lordship: What did your father give for it?

Witness: He gave £115,000, my lord. These were the only occasions upon which reference had been made to the Cornbury Estate as between Mr. Newman and himself.

294 COMPENDIUM OF COMMISSION CASES.

Sir Edward Clarke: When was the question of a residential estate first mentioned? Was it in June?

Witness said it might have been, but he was not certain. The only estate particulars he received from Mr. Newman were presumably from himself, for he (witness) knew of no other agents. In travelling from Reading to London the possibility of extending the scope was mentioned in the course of conversation between himself and Mr. Newman. This reference was made owing to certain business changes which had occurred, and which made it less important that they should reside on the direct route to Ireland. Witness suggested to Mr. Newman that as his father would like to reside near the sea, perhaps it would be possible to secure an estate on the coast, and within easy distance from London. This suggestion was afterwards made to his father, who said it was not a bad idea, and asked Mr. Newman to act upon it. His father subsequently brought him some particulars, and asked him to look over them. It was certainly not a fact that Mr. Newman had furnished him with several particulars, and that he undertook to take copies of them.

Sir Edward Clarke: Where is your father?

Witness: He is unwell, and is laid up at my house.

The Hon. Fitzroy-Stuart, secretary of the Central Conservative Association, Westminster, and cousin to Lord Churchill, said that in May, 1896, he was in the habit of meeting Mr. Hooley. He was then aware that Lord Churchill was prepared to sell his estate, and he received from his lordship a book of particulars, which he handed to Mr. Hooley, some time between May 19 and Whitsuntide, when he had occasion to call at the Midland Hotel on business connected with the Dunlop Tyre Company. He could not remember whether or not the name of the plaintiffs appeared on the particulars. Witness saw Lord Churchill on May 16, and Mr. Hooley on May 19, when he came to dine with him. Mr. Hooley said "perhaps the estate will suit him," or words to that effect. He mentioned the name of Mr. Du Cros, but witness was not certain that it was on the same occasion. After the negotiations had been carried on for some considerable time, witness wrote to Mr. Hooley informing him that Lord Churchill would call the next morning. He had been offered and had declined a commission in respect of the transaction.

Lord Churchill, examined by Mr. Bucknill, said he was the owner of the Cornbury Estate in 1894. He decided to dispose of the property by private treaty, and employed the plaintiffs for that purpose, and arranged as to the commission they were to receive in the event of a sale being effected. He was advised by the plaintiffs to have an auction, and refused, but subsequently gave his consent, with the result that the estate was offered for public competition; the highest amount offered did not reach the reserve. In connection with the auction witness paid Messrs. Walton and Lee 200 guineas, the amount of their fee, 100 guineas for preparing the particulars, and out-of-pocket expenses. The estate was mentioned to Mr. Hooley by his cousin, Mr. Fitzroy-Stuart. The first occasion upon which he (witness) had an interview with Mr. Hooley in reference to the property was on July 3, at the Midland Hotel. Mr. Hooley then said it would be like'y to suit a friend of his, mentioning Mr. Du Cros' name. He had been previously introduced to Mr. Hooley some time in the month of June. On the evening of July 7, the date upon which the estate was submitted to auction, witness dined at the house of a friend, and there met Sir Jacob Wilson. During the evening he remarked that the property had been bought in, but that he expected to sell it to either Mr. Hooley or Mr. Du Cros. On the following day he called on Messrs. Walton and Lee for the purpose of knowing what took place at the auction. Counsel here read an abstract from the plaintiff's diary for that day, and witness explained that the letters mentioned therein were those he had received from two South African gentlemen, who had expressed their willingness to treat for the property privately. On July 15 he called upon Mr. Hooley at the Midland Hotel, where he also saw Mr. Du Cros, whom Mr. Hooley introduced a propos of his buying the estate. On the same evening Sir Jacob Wilson called at his residence, and informed him that he had been deputed by Mr. Hooley to view and report upon the property. He said he intended fulfilling his mission on the following day, and invited witness to accompany him. Witness did so, but returned the same day in time for a division in the House of Lords, leaving Sir Jacob Wilson at Cornbury. On July 22 witness again went down to Cornbury, this time in

company with Mr. Du Cros, who wrote on the next day signifying his willingness to purchase the estate.

Addressing his Lordship, Lord Churchill, at this juncture of the proceedings, said that if he was liable to pay commission at all under the circumstances, he was liable to pay such on the sum of £150,000, and not on £115,000. In the interview which he had with Mr. Hooley on July 23 he was asked the lowest price he was willing to accept, which he stated to be £150,000, and Mr. Hooley agreed to this sum.

His Lordship: But how was the price reduced to £115,000?

Mr. Bucknill: That was all that Mr. Du Cros would give. Lord Churchill was desirous of showing that he did not wish to hold anything back. There was no secret whatever as to the amount for which the estate was sold.

After some further evidence by Lord Churchill,

Mr. George Henry Sanday, a member of the firm of Rawlence and Squarey, estate agents, 22, Great George Street, S.W., and Salisbury, said that his firm were agents to the defendant, and a considerable portion of the work in connection with the sale of the Cornbury Estate was done on the understanding that his firm were to receive a share of the commission. On March 7, the plaintiffs offered him one-third, but witness, on a subsequent date, insisted upon having half of the commission, pointing out that this was a particular and important transaction, and had given them a great deal of trouble. This interview was with Mr. Walton, who informed him that it was the usual custom to allow one-third.

The witness was cross-examined, and this concluded the evidence, and

Mr. Bucknill proceeded to address his Lordship. Before proceeding to deal with the facts of the case, he expressed his regret that there should be a cloud overhanging the circumstances of the transactions which he had not been able to dispel. He had fully intended to ask Mr. Hooley when he was in the box on the previous day, to explain the circumstances under which he paid the £35,000 (difference). But they had the open statement of Lord Churchill, who wished it to be perfectly understood that if he was liable to pay commission at all, he was liable to pay on the £150,000. That was what an honourable gentleman ought to do.

The matter was, however, not relevant to the matters in issue. Whatever the private arrangement between Mr. Hooley and Mr. Du Cros was, the evidence before the Court was that Mr. Du Cros was determined not to pay more than £115,000, and Lord Churchill was determined not to accept less than £150,000. Mr. Newman had not made out any claim for commission, and he had said that he did not make any claim because he had not done anything to earn it.

Sir Edward Clarke, in the course of his address, said he could not understand why Lord Churchill had been advised to make an affidavit that he had sold the estate for £115,000. He was also at a loss to know why the case was defended at all, inasmuch as in 1894 the plaintiffs were the only persons employed to sell the estate.

In giving judgment, his Lordship, after minutely stating the facts, said that the plaintiffs contended (1) that they furnished Sir Jacob Wilson with particulars so that he might put them before Mr. Hooley; (2) that Sir Jacob Wilson did put them before Mr. Hooley, and thus brought the estate to Mr. Hooley's notice; (3) that Mr. Hooley then introduced the matter to Mr. Du Cros, who, as a consequence, made the purchase. He was of opinion that that contention was not well founded. Sir Jacob Wilson did not introduce the property to Mr. Hooley's notice at all. It was brought to Mr. Hooley's notice by Mr. Fitzroy-Stuart, with whom the plaintiffs had nothing whatever to do. But the plaintiffs further said that if they did not introduce the business to Mr. Du Cros's notice through the channel of Sir Jacob Wilson and Mr. Hooley, they introduced it through Mr. Newman, and the sale was thereby brought about. Mr. Newman frankly and properly said that he considered that he did nothing in bringing the estate to Mr. Du Cros's notice, and that, having done nothing, he put forward no claim for commission. The conclusion he came to on the whole of the evidence was that the sale to Mr. Du Cros could not be attributed to any efforts direct or indirect of the plaintiffs. That neither Sir Jacob Wilson nor Mr. Newman was instrumental in bringing the estate to Mr. Du Cros's notice in such a way as to induce a sale, or indeed at all, and therefore he must give his judgment for the defendant. He regretted that Lord Churchill's opponents in this case had not been treated with the frankness and candour they were en-

titled to expect. He thought Lord Churchill and his solicitors made statements as to commissions having been paid elsewhere than to the plaintiffs which the facts did not fairly warrant, and he thought that the defendant's affidavit as to the price which he obtained for the property was, to say the least of it, misleading. Such an affidavit ought not to have been drafted, and Lord Churchill ought never to have sworn it. There would be judgment for the defendant, with costs.

Counsel for the plaintiffs: Sir Edward Clarke, Q.C., and Mr. Montague Lush; counsel for the defendant: Mr. Bucknill, Q.C., and Mr. Cagney.

Brodie, Timbs and Co. v. Fitzwilliam.

Islington County Court, December 8, 1897.—Before his Honour Judge Meadows White.

Reported ESTATES GAZETTE, Vol. I., p. 961.

*First introduction by giving name and address of purchaser—
Paying two agents.*

In this case a claim of £37 10s. was made for commission on the sale of Nos. 10 and 11, Eldon Road, Hampstead. The plaintiffs were Messrs. Brodie, Timbs and Co., auctioneers, surveyors and estate agents, of Finsbury Circus, Hampstead and Highgate.

From the opening statement of counsel, it appeared that the defendant wrote to the plaintiffs on January 9, 1897, and desired them to offer the property to auction. After Mr. Brodie had made a survey of the premises, particulars were prepared, and a reserve of £1,850 was fixed, the defendant agreeing to pay 2½ per cent. commission if a sale was the result. The plaintiffs advertised the property in the usual manner, but the sale, which took place on March 4, proved abortive. On March 16 defendant wrote asking if the plaintiffs had any offers to submit to him, and they replied that a gentleman had just come into their office and offered £1,500 for the two houses. The defendant then answered by stating that the price named was too low, and asked them to get their client to make a better offer; he also requested them to send the name and address of their client. On March 17 the plaintiffs enclosed the name and address of Mr. William Rider, of 119, Haverstock Hill, N.W. The matter dropped for a time, and subsequently the plaintiffs found that Mr. Rider had purchased the property for £1,500, and accordingly brought the present action for commission, on the ground that they had first introduced Mr. Rider.

Mr. Percy Alexander Timbs, partner in the plaintiffs' firm, bore out the learned counsel's statement. He further said he believed that two years ago the property was on their books at the Hampstead branch office for letting. When the defendant instructed his firm to sell the houses, witness discussed the terms with him, and arranged that he should withdraw the property from the hands of other agents, as was customary in such cases, and also that the other agents should take their boards down. After the sale his firm endeavoured to find a purchaser by private treaty. They sent the name of Mr. Rider when requested to do so by the defendant on March 17. He should still claim commission if they had not introduced Mr. Rider, because it might be through their exertions in connection with the auction that the purchase was brought about.

Mr. Brodie, also a member of plaintiffs' firm, stated that the actual offer was made to him by Mr. Rider on March 17.

On behalf of the defendant, Mr. Rider, the purchaser, said the property was first introduced to him by Messrs. Dolman and Pearce on January 21, and they made two offers for him of £1,400 and £1,500, the latter two days after the auction. They completed the purchase on June 9, when he first came into communication with Mr. Fitzwilliam. He saw Messrs. Brodie, Timbs and Co.'s sale particulars in the office of Messrs. Dolman and Pearce, where he attended frequently. He went to the plaintiffs because he thought they might have more influence with the purchaser.

Mr. William Thomas Pearce, member of the firm of Dolman and Pearce, of 62, Haverstock Hill, N.W., said he received instructions from the defendant to find a purchaser on January 21, when it was stated that if their client purchased before the auction they would be paid commission, but that if he waited, the defendant, of course, could not allow it. Witness carried through the negotiations for Mr. Rider, whom he first mentioned by name to the defendant on May 6. It was not usual for agents to disclose the principal's name at the first offer. Witness inserted an advertisement in one of the papers, asking for houses up to £1,000 value, and the "R" in it might refer to Mr. Rider. It was purely speculative on his part.

Mr. Fitzwilliam, the defendant, said he put the matter in the hands of several agents. He had paid

300 COMPENDIUM OF COMMISSION CASES.

Messrs. Dolman and Pearce commission to the amount of £37 10s. He first asked £1,050 for each of the houses.

For the defendant it was contended that it was perfectly immaterial whether the name was first disclosed by the plaintiffs or not, and there could be no doubt that the people who first introduced the purchaser were Messrs. Dolman and Pearce.

For the plaintiff it was argued that the offer of £1,500 was first made by the plaintiffs, and that it was through their introduction, by disclosing the name and address that the purchaser was found, and the conditions fulfilled.

His Honour considered that the true introduction was made by the plaintiffs by the letter of March 17, disclosing the name and address, and gave judgment in their favour.

Counsel for the plaintiffs: M. A. G. M. McIntyre;
counsel for the defendant: Mr. Gosney.

Reeves and Son v. Goodwin.

Court of Appeal, December 21, 1897.—Before Lords Justices A. L. Smith, Rigby and Collins.

Reported *ESTATES GAZETTE*, Vol. 1., p. 1039.

Alternative claim—Commission or damages on a quantum meruit

This was an appeal by the defendant from a judgment of the late Mr. Justice Cave, deciding that the defendants should pay £245 to the plaintiffs, who are a firm of London solicitors. The action was brought to recover the sum of £550, being commission alleged to be due in respect of a loan of £21,000, which the plaintiffs were employed to obtain for the defendant under two contracts in writing, dated April 27, 1896, the security for the loan offered by the defendant, who is a builder, being two blocks of flats, then known as "A" and "B" Army and Navy Mansions, in Victoria Street. By this arrangement £12,000 was to be raised on one block, and £9,000 on the other. It was contended by the defendant that the contracts in writing were made and referred to a particular advance then in contemplation of the parties from a building society, which came to nothing, and that the subsequent negotiations for a loan from the Hearts of Oak Friendly Society were not governed by the contract. This the plaintiffs denied, and contended that they ought to have had 14 days' notice to complete, as arranged by the written contracts in this case as in the former, and that had the

defendant given them such notice before revoking his authority to them, their clients would have advanced the sum required. Under these circumstances, they claimed to be entitled to commission as if the loan had in fact been made. Mr. Justice Cave decided that the amount that the plaintiffs were entitled to was only commission on part of the proposed loan, and entered judgment for £245 in their favour. The defendant appealed.

Lord Justice A. L. Smith, in the course of his considered judgment, said during the trial Mr. Justice Cave gave the plaintiffs leave to amend their claim, and to add an alternative claim for payment of their services on a *quantum meruit*. The defendant had, in reply to that, paid £100 into Court. In his opinion, the plaintiffs were not entitled to commission, but they were entitled to be paid for their services up to the time that their authority to act as agents for the defendant to procure this advance ended. He thought that the written conditions as to notice were not meant by the parties to govern any negotiations of the plaintiffs other than the advance which was at that time before them. There was no evidence upon which they could hold that the £100 paid into Court was not a fair and reasonable return for the services the plaintiffs had rendered the defendant; and there seemed to him no doubt that the defendant was justified in giving notice revoking his authority so soon as he found that he could obtain an advance elsewhere. Judgment would, therefore be entered for the plaintiffs for the £100 paid into Court; but the plaintiffs were to pay the costs of the appeal and the trial.

Lords Justices Rigby and Collins having delivered judgments to the same effect, the appeal was allowed on these conditions.

Counsel for the plaintiffs: Mr. Atherley-Jones, Q.C., and Mr. Compton Smith; counsel for the defendant: Mr. Jelf, Q.C., and Mr. Arnold White.

Bunting v. Crane.

Queen's Bench Division, December 21, 1897.—Before Mr. Justice Darling.

Reported *ESTATES GAZETTE*, Vol. II., p. 59.

Disputed authority to sign commission note.

This was an action brought by Mr. Frederick William Bunting, a public-house broker, against Messrs. Thomas

302 COMPENDIUM OF COMMISSION CASES.

Crane and Sons, proprietors of Prince's Hotel, Prince's Square, Bayswater, to recover commission in respect of the sale of the defendants' house. The defendants denied liability.

Mr. Abel Thomas, in opening the case, said the defendants, Messrs. Crane and Sons, were the proprietors of the Prince's Hotel, Prince's Square, Bayswater, and wine merchants, and on March 3 they were anxious to sell their house. They gave the plaintiff a commission note to the effect that if he sold the house for them at £12,000 his commission would be £100, but that if the sum realised was below £12,000 the commission would be £50. The plaintiff introduced Mr. Bevan, of the Lyric Tavern, Great Windmill Street, and he made an offer of £11,250, which was accepted, and a contract entered into. Mr. Bevan paid a deposit of £200. The contract was not carried out within the time specified, and in order to get an extension of time Mr. Bevan paid a further deposit of £300, making £500 altogether. The plaintiff had found a purchaser, and he submitted that he was entitled to recover his commission.

The plaintiff was called and bore out the opening statement of counsel.

In cross-examination, the plaintiff said though he did not show Mr. Crane, sen., the commission note, he told him of its terms. The note was signed by Mr. Harry V. Crane. After he had introduced Mr. Bevan, Mr. Crane, sen., told him that he should pay the commission after the change, and he replied that he did not agree to any such condition.

Mr. Justice Darling said if the change had not taken place defendants had done very well, because they had received a deposit of £500, which, he presumed, would be forfeited.

In re-examination, the plaintiff said that after the contract was signed he went to lunch with Messrs. Crane at the Trocadero. On that occasion Mr. Crane, sen., said he (plaintiff) was to be paid when the change took place, and he replied that he was fully entitled to his commission then.

Mr. Bevan, licensed victualler, and formerly proprietor of the Lyric Tavern, Great Windmill Street, stated that the plaintiff introduced him to Messrs. Crane and Sons, and that in consequence of that introduction he made an offer of £11,250 for the Prince's

Hotel, which was accepted. He paid a deposit of £500, which was still in the hands of the defendants. He sold the benefit of his contract to another person, but the defendants would not allow the contract to be carried through, as they alleged the time for the completion of the contract had expired.

In cross-examination the witness said the defendants had brought an action against him, and he had commenced an action against them.

Mr. David: You never had the £11,250 to complete?

I sold the Lyric Tavern and bought the defendants' house. Unfortunately the person who purchased the Lyric Tavern at that time did not complete?

How much did you get out of the Lyric Tavern?

£1,600.

On behalf of the defendants it was submitted that the business of the hotel was carried on by Mr. Crane, sen., alone, and not in partnership with his sons. The commission note was written by Mr. Harry V. Crane without the authority of his father. He further contended that the letter written by the son was superseded by a conversation between the plaintiff and Mr. Crane, sen., and that the arrangement between the parties was that the commission should be paid after the change.

Mr. T. Crane said he was the sole proprietor of the Prince's Hotel, and his sons acted as his managers and were paid for their services. He gave his son no authority to write the commission note, though he heard from his son that it had been written. He saw the plaintiff several times, and when the question of commission was mentioned by him he told him that if he (the plaintiff) came round to his house the morning after the change he would pay him his commission. Mr. Bevan had never completed, nor had any of his sub-purchasers. The house was put up for auction on December 14 by Messrs. Orgill, Marks and Orgill, and as the highest bid was only £9,300—about £2,200 less than the price at which Mr. Bevan had agreed to purchase it—he withdrew it.

Mr. Harry V. Crane, a son of the former witness, gave corroborative evidence.

His Lordship gave judgment for the plaintiff for £48, with costs, the plaintiff having admitted that he had received £2 on account of the commission.

Counsel for the plaintiff: Mr. Abel Thomas, Q.C.,

304 COMPENDIUM OF COMMISSION CASES.

and Mr. Howell; counsel for the defendant: Mr. David.

Cooksey v. Braxton.

Reading County Court, January 20, 1898.—Before his Honour Judge Lushington.

Reported ESTATES GAZETTE, Vol. li., p. 225.

A purchaser must not only be willing, but ready with his money.

Mr. Frank Cooksey, house and estate agent, of the Market Place, Reading, sued Messrs. Braxton and Son, of Maidenhead, for £25 as commission upon the alleged sale by the plaintiff of certain houses belonging to the defendants.

It appeared that in April, 1897, the defendants, who were the owners of some cottages in Elm Park Road, Reading, gave instructions to the plaintiff to try and find a purchaser for the cottages at £1,000, and arranged to pay 2½ per cent. commission on the required purchase being made. In November an offer of £900 was made. The offer was increased to £950, but the defendants still held out for the £1,000. Subsequently the plaintiff wrote to the defendants stating that he had every reason to believe that he would be successful in bringing his negotiations for selling the property at £1,000 to a satisfactory conclusion, but he asked defendants (who had written to the effect that unless the client was prepared to close at once the price would be withdrawn), to let the matter remain open for another week, as matters of that kind were not quickly carried through. He (Mr. Jones) held that plaintiff had done all he was bound to do to earn his commission.

Mr. Cooksey gave evidence in accordance with his counsel's opening statement.

William Albert Clarke, draper's manager, said he made a definite offer to the plaintiff of £1,000 for the cottages on November 12, and was ready to carry out the bargain. The transaction was never carried out, but witness was still willing to purchase the cottages.

For the defendant it was argued that the contract for the purchase of the houses by Mr. Clarke was not completed, as was shown by the fact that plaintiff asked for a week's extension of time. He held that there was no valid offer made by Mr. Clarke, who was not prepared at once to come forward with the money.

His Honour held that it was not necessary that a house agent, to earn his commission, should actually

fix the would-be purchaser with a legal liability. It was enough that he should find a purchaser ready and willing to complete the bargain on the terms stipulated, but his means for the purpose must be beyond suspicion and unconditional. And bearing in mind the fact that Mr. Clarke asked for a week to complete his arrangements, he must hold that the commission had not been earned, and give judgment for the defendant.

Counsel for the plaintiff: Mr. Griffith Jones; counsel for the defendants: Mr. A. H. Spokes.

J. A. Lumley and Co. v. Lord Walsingham.

Westminster County Court, February 17, 1898.—Before his Honour Judge Lumley Smith.

Reported *ESTATES GAZETTE*, Vol. II., p. 348, and p. 446.

Several agents employed.

This was an action in which the plaintiffs, Messrs. J. A. Lumley and Co., house agents, of 34, St. James's Street, sued Lord Walsingham to recover a sum of 16 guineas as commission at the rate of five per cent. on the letting on lease of a shop, No. 151, Piccadilly. The defence was that the letting was brought about by another firm of agents.

Mr. Thomas Williams, managing clerk to the plaintiff firm, deposed that in the early part of 1895 he received instructions from Mr. Gerali, who was the town agent of Lord Walsingham, to find a tenant for the premises in question, and on the 23rd of the following September he introduced the matter to Major Alban, who was acting on behalf of the cigar company, and after informing him as to what the terms were, took him over the premises. He afterwards saw Mr. Gerali and told him that he had introduced the matter to Major Alban, and that he had expressed the opinion that the place would be suitable for the purpose for which it was required. In the following December witness happened to pass by the place, and then found that the cigar company were in possession. An application was thereupon sent in for commission, but the defendant, through his agent, repudiated liability on the ground, as he alleged, that the place was let by Messrs. May and Rowden.

Mr. Hutton, for the defence, said his case was that the premises in question were put upon the books not only of the plaintiff firm and those of Messrs. May and Rowden, but also several other agents. As a matter of fact, Major Alban was introduced by Messrs.

306 COMPENDIUM OF COMMISSION CASES.

May and Rowden, who carried the whole matter through and had been paid their commission.

Mr. Paul Stanley May, a member of the firm of May and Rowden, house agents, of 39, Maddox Street, W., said that in June of 1895 Major Alban called at the office for the purpose of getting some shop premises in the West End, and among others which were mentioned to him was the one in question. In due course the matter was carried through by his firm, and the premises were let to the cigar company on lease, at a rental, £275 for the first year, £285 for the second year, and £300 for the third year. The first time he heard it suggested that the plaintiffs were claiming for commission on this transaction was when he was called as a witness in this case. He was aware, however, that the plaintiffs were instructed, as were also several other firms of agents. His firm had been paid commission at the rate of $7\frac{1}{2}$ per cent., which was the usual charge in cases of this kind.

Mr. Arthur Robert Rowden was next called, and said he saw Major Alban's manager in October, 1895, but did not see the major himself. He mentioned this particular shop to the manager, and had an interview with him for that express purpose.

In his opinion, his firm were the first to introduce Major Alban as a tenant.

Mr. Robert Menzies said he was Lord Walsingham's agent, and had the conduct of this matter. He placed the matter in the hands of several agents, including the plaintiffs, and Messrs. May and Rowden. The latter firm were the first to bring him into communication with the subsequent tenant by a wire, which they sent to him in November, 1895. He subsequently called and saw Mr. May, who, after communicating with the proposed tenant, informed him that the matter was closed. At the time he was not aware that the plaintiffs had also introduced the same tenant, otherwise he would not have paid the commission without making inquiry.

Mr. Gerall also gave evidence.

Major Alban gave evidence to the effect that in September, 1895, he was manager of the Indian Empire Cigar Company, who were at that time looking out for premises in Piccadilly. He (witness) called upon the plaintiffs, and on having told them what kind of premises he required, was conducted by Mr. Williams,

the plaintiffs' representative, to the shop in question; and having been shown over them, expressed the opinion that things were suitable for the business of the company, and asked plaintiffs' representative if he could get him the refusal of them for one week. On the 16th of the following October he got a letter from the plaintiff firm asking him to make a definite offer, and he agreed to do so. Shortly after that he received a list of shops from Messrs. May and Rowden; but so far as his memory served him the shop in question was not included in that list. Shortly after that, a representative of May and Rowden called upon him, but as he was out the time he did not see him, but he understood from his assistant that something was said on that occasion about the shop at Walsingham House. On a subsequent occasion he went to Messrs. May and Rowden, and his impression was that they mentioned Walsingham House to him, but he could not be certain as to whether or not he told them that he had already been introduced to it by the plaintiffs. In all probability he did do so. Messrs. May and Rowden never took him over the premises, nor did they give him an order to view. The letter of September 9, 1896, to the plaintiff firm, and in which he (witness) stated that they were the persons who first introduced him to the premises, was in his handwriting, and was what was in his mind at the time.

Cross-examined: He could not remember whether or not Messrs. May and Rowden showed him an entry in their books relating to the shop in question. Beyond the fact that he went to the plaintiffs in the first instance and was introduced by them to the shop in question, he had nothing more to do with them, and carried the matter through with Messrs. May and Rowden, and the reason he did so was that they quoted him a lower rental than plaintiffs had done.

His Honour gave judgment for the defendant, with costs.

Counsel for the plaintiffs: Mr. P. Rose-Innes;
counsel for the defendant: Mr. Hutton.

Carter and Le Grand v. Baker Brothers (Ltd.)

Queen's Bench Division, February 26, 1898.—Before the Lord Chief Justice and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. li., p. 399.

Disputed retainer and introduction.

In this action the plaintiffs, public-house brokers, of

303 COMPENDIUM OF COMMISSION CASES.

Southampton Street, Bloomsbury, sued the defendants for £1,800, being 1 per cent. commission on the sale of the Angel and the Victoria public-houses, in Islington, to a Mr. Robert James Brinkley for £180,000. The defendants denied that they had employed the plaintiffs to sell the houses and that the plaintiffs had procured a purchaser.

Mr. Le Grand, a member of the plaintiff firm, gave evidence. He said that in August, 1896, he heard at Nicholson's Distillery that the Angel and the Victoria were for sale at £180,000. Knowing a Mr. Brinkley, he communicated with him and informed him that these houses were for sale at that price and asked if he would buy them. Mr. Brinkley said he would like to have them, if he could be financed. Witness then saw Colonel Baker, a member of the defendant firm, at the Falstaff in Eastcheap. Colonel Baker said he would not take less than £180,000, as the houses were freehold, and were doing £3,000 a month. He asked who the proposed purchaser was, and witness replied that it was Mr. Brinkley, but he could not act for him as Cathie was his broker, and he (witness) would expect to act for defendants. Witness asked Colonel Baker to give him till the next Tuesday to carry the matter out, and Colonel Baker told him to bring his man up to Nicholson's Distillery next day. Witness accordingly saw Mr. Brinkley and arranged to meet him at the distillery. Witness, Mr. Brinkley and Colonel Baker were all at the distillery next morning, and it was arranged that witness and Mr. Brinkley should look over the houses. This they did that day. On the 18th the three of them again met by arrangement. A Mr. Bishop, representing Messrs. Nicholson, was there too, and he arranged to finance Mr. Brinkley to the required extent. It was then arranged that Mr. Brinkley should buy at £180,000, whereupon they went to the defendants' solicitors' office. The contract was drawn up there, but witness was in another room at the time. Colonel Baker went away by a side door so that witness could not see him. When witness saw him shortly afterwards he repudiated his liability to pay commission. The plaintiffs' names were inserted in the contract as the persons who were to prepare the inventory on behalf of the vendors.

Cross-examined: The properties had recently changed hands at £230,000. Though he had entered in his

diary the fact that he had gone to the Falstaff, he did not record his having been retained by Colonel Baker, as he thought that he was quite safe when his name was in the contract. He afterwards put down the fact of his repudiating liability. After the repudiation plaintiffs advertised the fact of the sale.

Mr. Bishop, manager to Messrs. Nicholson's Distillery in Clerkenwell, was next called. He said that on August 15, 1896, when Mr. Brinkley, Colonel Baker and Mr. Le Grand were at the distillery, witness had some conversation with Colonel Baker about the sale, but the latter said nothing about having met Mr. Brinkley at Ascot.

Mr. R. J. Brinkley, who had bought the houses, stated in evidence that it was from Colonel Baker at Ascot that he first heard of the matter. He heard of it again from Mr. Le Grand, and the purchase was the result of the second communication.

For the defence, the first witness was Colonel Baker, chairman of the defendant company. He said that in June, 1896, he saw Mr. Brinkley at the Ascot races, and promised him the first refusal of the Angel and Victoria. He was afterwards approached by other persons who were desirous to buy. When he saw Mr. Le Grand at the Falstaff he told witness that he thought he could find him a customer. Witness interrupted him and said that he did not want anyone to find a customer, and that he would not pay commission to anyone, as he could sell the houses three or four times over. Witness told him that if he had any client he must look to him for commission. When Mr. Le Grand asked if witness would give him till Monday, he replied that he would give him nothing. Next day he saw Mr. Brinkley at the distillery, but there had been no appointment. Mr. Brinkley said that witness had promised him the refusal. Witness said that he should have the first refusal, but that he must consult his brother. Witness also saw Mr. Le Grand at the distillery, but they did not speak to one another. The next Tuesday he saw Mr. Brinkley again at the distillery, and asked him to come to his solicitor's office. At that time he saw Mr. Le Grand at the distillery, but nothing passed between them. At the solicitor's office that afternoon Mr. Bishop suggested that Mr. Le Grand should check the inventory, as he had taken some trouble in the matter, and witness might give him a job.

310 COMPENDIUM OF COMMISSION CASES.

Cross-examined: It was not usual to employ brokers in the transfer of public-houses. When he met Mr. Brinkley at Ascot nothing was said about price. The trade of the houses was only £2,800 a month. When Mr. Le Grand left the Falstaff witness did not think that he was going to do anything about the sale. He did not know why Mr. Le Grand had asked whether the house would be sold by Monday. It rather puzzled him to know why Mr. Le Grand went to the solicitor's office. He thought Mr. Le Grand's object in going to the Falstaff was to try to worm himself into getting a commission somehow or other.

In reply to the learned Judge, the witness said that only £30,000 passed in cash, there being £150,000 on mortgage.

Other evidence having been given in support of the defendants' case, the learned Judge having summed up, the jury found a verdict for the defendants.

Counsel for the plaintiff: Mr. Marshall Hall and Mr. F. Low; counsel for the defendant: Mr. Lawson Walton, Q.C., and the Hon. Alfred Lyttelton.

Perks v. House.

Queen's Bench Division, March 16, 1898.—Before Mr. Justice Wills.

Reported *ESTATES GAZETTE*, Vol. li., p. 537.

Agent not fully instructed as to property—Commission recoverable.

This was a claim of £87 10s. for commission earned in respect of the sale of a farm at Barton Stacey, Hampshire, for £3,500. The plaintiff was Mr. Frank Perks, auctioneer and surveyor, of Waterloo-place, S.W.

It appeared from the evidence that a deposit had been paid and a contract signed agreeing to purchase, subject to a formal contract. The acceptance of the offer of £3,500 was authorised by the defendant, who also authorised Mr. Perks, the plaintiff, to accept the deposit, which was paid. When the formal contract was sent on by the defendant's solicitors to the proposed purchaser, it contained a covenant that the sale was subject to manorial rights. The intending purchaser then ascertained that the lord of the manor claimed to have the right of shooting and fishing over the property. Upon this, he declined to go on with the purchase on the ground that no statement had been made previously that there were any such manorial rights, and he sued

Mr. Perks for the return of the deposit, the plaintiff having been instructed by the defendant not to part with the deposit. Mr. Perks interpleaded, and eventually the defendant instructed the plaintiff to return the deposit, the purchase having fallen through.

A claim was then made for commission by Mr. Perks on the grounds that there were no disclosures in his instructions of any manorial rights upon the property, and that he had found a purchaser for the property which he had been instructed to sell, and therefore he was entitled to his commission.

The defence set up by the defendant was that these manorial rights had been mentioned to Mr. Perks' managing clerk in February last, that is, about four weeks before the deposit was paid and accepted.

Upon hearing evidence on both sides,

Mr. Justice Wille, in giving judgment for the plaintiff, said he believed the statement made by Mr. Perks' managing clerk was true, and that no statement was made by the defendant as to any manorial rights.

Judgment was accordingly given for the plaintiff for the full amount claimed, with costs.

Counsel for the plaintiff: Mr. Crump, Q.C., and Mr. Herbert.

Pidsley v. Carr.

Queen's Bench Division, March 21, 1898.—Before Mr. Justice Bruce and a Jury.

Reported *ESTATES GAZETTE*, Vol. li., p. 537.

Disputed agreement as to commission—Completion of purchase—Disputed introduction.

This was an action in which the plaintiff claimed to recover £100, as an agreed amount of commission upon the sale of a public-house, and the principal questions in dispute were whether the commission was to become due only upon the intended purchase being completed, and also whether it was the plaintiff who introduced the intending purchaser or someone else who did so.

The plaintiff carried on business at Streatham as a public-house broker and agent, and his case was that in September of 1897 he called upon the defendant at the Primrose, in Oxford Street, and said that he understood that he had for sale the Kinder Arms, in Little Turner Street, Commercial Road. Thereupon the defendant gave him particulars of the house, and said

that he wanted £3,800 for it. The plaintiff said that he supposed the defendant would pay a commission for the introduction of a purchaser, and the defendant said that if he found a purchaser he would pay him £100 commission. The plaintiff's case was that he thereupon introduced as a purchaser Mr. Bannall, and this person agreed to buy the house for £3,800, and paid £100 deposit. It happened that Mr. Bannall did not complete the purchase, but it was said that the plaintiff had done all that he was bound to do to entitle him to his commission.

Mr. Scarlett admitted that the law was that if the plaintiff had done all that in him lay to entitle him to his commission, then he was entitled to recover, but in this case the dispute was as to a matter of fact. His case was that the agreement between the parties was that commission was to be paid only when the contract had been completed. His case further was that Mr. Bannall had refused to complete, and, of course, what had happened in reference to the non-completion of the contract arose from no fault of the defendant.

The plaintiff in the course of his evidence, said that the agreement to pay commission was made between himself and the defendant at the Primrose, in Oxford Street, and he denied that anything was said to the effect that no commission should become payable until the contract to purchase had been carried into effect.

Mr. Samuel Bannall said the plaintiff first introduced the Kinder Arms to his notice. In cross-examination he said that he resold the house to a friend, who paid the £100 deposit, but he gave his friend that £100 back; and he did not complete because he had signed the contract without first arranging for a loan from the brewers, and afterwards he could not get the requisite money.

Mr. Scarlett, in addressing the jury, said that his case was that the commission was to be paid only upon the contract to purchase being completed; and, in fact, there had never been any completion of the contract. This was the arrangement, not only with the plaintiff, but with Mr. Collier also. The services rendered by the plaintiff were valueless to the defendant, because he had never introduced anybody who had completed the purchase.

Mr. Thomas Carr, the defendant, said that he formerly had the Primrose, in Oxford Street, and after-

wards he entered into a contract to purchase the Kinder Arms. He then wished to resell it. The plaintiff called upon him, and asked if he had the Kinder Arms for sale. He said "Yes," and added, "If you find the man that will complete the purchase." Witness had previously had three people who were to buy the house, but neither of them had completed the purchase, and therefore he contracted that he should pay commission only upon the purchase being completed. Mr. Bannall and Mr. Collier came to sign the contract of purchase, but before that the plaintiff had never said anything about his having introduced Mr. Bannall. Witness said that Mr. Bannall had led him to understand that it was Mr. Collier who had introduced him to the house. Witness also said that he had given Mr. Collier a commission note.

The jury found a verdict for the plaintiff for the £100 claimed.

Counsel for the plaintiff: Mr. Rufus Isaacs and Mr. Coltman; counsel for the defendant: Mr. Scarlett.

Mann v. Rich.

Queen's Bench Division, March 21, 1898.—Before Mr. Justice Grantham.

Reported *ESTATES GAZETTE*, Vol. li., p. 537.

*Sale of public house—Refusal of brewers to accept tenant—
Commission not recoverable.*

This case was one in which the plaintiff sued to recover commission upon the sale of a public-house.

It was stated in the course of the case that the plaintiff was a commission agent, and that the defendant was a licensed victualler, who last year kept the Victory, in South Bermondsey, a house which he desired to dispose of. The plaintiff saw him upon the matter, and on April 27, 1897, the defendant signed the following commission note: "I, the undersigned, agree to pay Robert Wm. Mann £250 should he procure a purchaser for the public-house known as the Victory, at South Bermondsey, the same to be paid on the day of change." The plaintiff upon receiving this note tried to find a purchaser, and he found a Mr. Hooper, who wished to purchase the place. The defendant thereupon said that the £250 was too high a sum, and at his suggestion the plaintiff was willing to lower the amount to £150, and agreed to do so. The day fixed upon for the change was July 22, and on that day the defendant said he did not want him to produce the com-

314 COMPENDIUM OF COMMISSION CASES.

mission note on that occasion, because he did not want his broker, who was present, to know that he had been to anyone else about the house. Subsequently he called upon the defendant for £150, but the money was not paid, and thereupon the present action upon the commission note was commenced.

Mr. Robert Wm. Mann, the plaintiff, gave evidence in support of his case. He said that he saw the defendant at the Burridge Arms, Plumstead, in April last. He said to him that he understood that the defendant wanted to find a purchaser for the Victory. The defendant said that was so, and that if the plaintiff found a purchaser for the house he would pay him a commission, but not the usual commission—he would pay him £250.

To Mr. Justice Grantham: The price of the house was £35,500. Witness himself wrote out the commission note, and the defendant signed it. Witness introduced several people to the defendant, with a view to purchase, and amongst them was Mr. Hooper. Previous to the day appointed for the change witness had written to the defendant saying that he would accept £150 instead of the £250.

Cross-examined: He was at the Victory on the day fixed for the completion of the transaction, though he was not actually in the room where the other people connected with the change were. It turned out, however, that Messrs. Watney, the brewers, would not accept Mr. Hooper as tenant or lend him £32,000 upon the house, and thereupon the matter went off.

Mr. Justice Grantham said that the proposed tenant never was accepted by the brewers, and that being so, what was the use of going further with the case? The proposed tenant, of course, could not buy the house if the brewers would not accept him. It was the brewers who had to find £32,000, the great bulk of the purchase money, whilst the other persons dealt only with the margins of the transaction; and if the brewers would not advance the required money, of course the transaction could not be carried through.

Mr. Pocock said he should like to hear what the gentleman who represented Messrs. Watney had to say upon the subject.

Mr. Stephen Jackson was called and said that he was a representative of Messrs. Watney for the division in which this house was. The firm were asked to lend

£32,000, upon the house, and he attended at the Victory on the evening of July 22 prepared to draw the cheque for £32,000. He found, however, that Mr. Hooper, who was a respectable man, was not going to put any of his own money into the purchase of the house, and therefore he refused to advance the proposed sum, and so the transaction was not carried through. Another purchaser, Mr. Dewar, was found, and the firm had advanced the requisite money to him.

Judgment was entered by his Lordship for the defendant, with costs.

Counsel for the plaintiff: Mr. Pocock; counsel for the defendant: Mr. Forman.

Bond v. Macer and Co.

Lord Mayor's Court, May 12, 1896.—Before Sir Charles Hall, Q.C., Recorder, and a Jury.

Reported *ESTATES GAZETTE*, Vol. li., p. 891.

Sale of a freehold ground rent—Customary commission—Several agents concerned

This was a claim for £25, for commission in respect of the sale of a freehold ground rent of £25, secured upon Nos. 5, 7, and 9, Prebend Street, Clerkenwell.

The plaintiff, who is an auctioneer, carrying on business at 51, Queen Victoria Street, stated in his evidence that early in May, 1897, he heard that Messrs. Macer and Co., surveyors, of 39, Cheapside, had for sale a ground rent of £25 per annum at 25 years' purchase. He stated that he called and obtained particulars with instructions to find a buyer, and that a verbal agreement was made that he should receive, in the event of a sale, a commission of one year's purchase. Again at the end of May he called and obtained particulars and received a written commission note, which stated in the event of his introducing a purchaser of a ground rent of £30 per annum on the premises in question at 25 years' purchase defendants would pay him a commission of one year's purchase. He did not, however, sue on the commission letter, which he had omitted to stamp, but upon the alleged previous verbal agreement. Plaintiff stated that he introduced the ground rent to a Mr. Watkins, a solicitor, who handed particulars to a Mr. Bullis, who brought the ground rent to the notice of Messrs. Tilleard, solicitors to Sir John Henry Johnson, who ultimately purchased.

For the defendants, Mr. A. T. Macer, P.A.S.I., a member of the defendant firm, gave evidence to the

316 COMPENDIUM OF COMMISSION CASES.

effect that in April, 1897, he was the freeholder of Nos. 5, 7, and 9, Prebend Street, upon which he was creating a ground rent of £25 per annum, for which he required 25 years' purchase net, or of £30 per annum, for which he required 24 years' purchase net. On May 31 plaintiff called upon him, and stated that he had a client ready to purchase the £30 ground rent at 25 years' purchase, and that he would require a commission of one year's purchase, and he thereupon gave plaintiff a commission letter for one year's purchase payable in the event of his selling for £750, a £30 ground rent, and handed plaintiff particulars, upon the distinct understanding that the ground rent should not be hawked about, and should be put before his client only. Subsequently defendants' solicitor, Mr. Douglas, received an application for particulars from Messrs. Tilleard, acting on behalf of Sir John Henry Johnson, who purchased a ground rent of £25 per annum at 25 years' purchase. Defendant had since received three claims for commission, viz.—from Messrs. Tilleard on behalf of Mr. Bullis, from a Mr. Gardiner, and from Mr. Bond, and that in each case they replied that the only agent employed was Mr. Bond, upon the terms of the commission letter given. That subsequently Mr. Bond called asking for commission, when he was informed that a £30 ground rent had not been sold, but that if he could prove he in any way was instrumental in introducing he should receive a present of £5.

Mr. P. H. Mallett, of the defendant firm, gave corroborative evidence, and Mr. Charles Climpson (Messrs. Climpson and Johnson) gave evidence as to the customary commission on sale of a ground rent.

In the result the jury returned a verdict for the defendants with costs.

Counsel for the plaintiff: Mr. Spokes; counsel for the defendants: Mr. L. E. Glyn.

Bowen and Co. v. Walker.

Stonehouse County Court, June 14, 1898.—Before his Honour Judge Woodfall.

Reported *ESTATES GAZETTE*, Vol. II., p. 1147.

Sale of public house—Alleged custom for both parties to pay commission—Specific agreement.

Messrs. Thomas Bowen and Co., house and estate agents, Plymouth, sued Mr. Richard Walker for £7 8s. commission.

On January 29, 1898, defendant, desiring to take a

licensed house, consulted Bowen and Co., who introduced him to two hotels, one being the Commercial Hotel, Calstock. Mr. Bowen affirmed that defendant agreed to pay him 5 per cent. commission on the purchase money if the introduction resulted in his buying a business. Negotiations ended in his taking the hotel.

In cross-examination, Mr. Bowen admitted having sent an account to Mr. Martin, acting for the lessee, commission in respect of the same transaction. Mr. Martin also agreed to pay him 5 per cent., but had not yet done so.

His Honour asked if it was the custom to get commission from both sides, and plaintiff replied it was in transactions relating to public-house property.

In defence Walker admitted that Thistle, in plaintiffs' employ, introduced him to Mr. Martin, but did nothing further, all the subsequent negotiations being conducted personally with Mr. Martin. During those negotiations Mr. Martin told him Bowen and Co. had nothing to do with the transaction. Defendant denied ever having promised to pay plaintiffs any commission.

Mr. Thomas Martin deposed to selling on behalf of his wife the leasehold interest in the Commercial Hotel to defendant. Previously, in conversation with Mr. Thistle, he told him he had a place in the market for £160, and offered to allow him the usual commission if he found him a customer, at the same time telling him not to advertise the place or put it in his list. Mr. Thistle introduced Mr. Walker to him. It was not, however, usual for both sides to pay commission. He had negotiated the purchase and sales of scores of public-houses, but had never known the purchaser pay commission. Meeting Mr. Thistle after the completion of the transaction, he learnt that plaintiffs had sent defendant a bill of commission. He remarked to Mr. Thistle, "You have charged commission both sides," and Mr. Thistle replied, "Yes, certainly, when we get a chance."

Mr. Thistle, recalled, denied this conversation, and reaffirmed that it was customary in the sale of small public-house businesses for both sides to pay commission.

His Honour held that apart from the question of custom, there was a specific agreement on the part of defendant to pay commission, and gave judgment for the plaintiff for the amount claimed.

Hughes v. Curtis.

Bournemouth County Court, June 23, 1898.—Before his Honour Judge Philbrick.

Reported ESTATES GAZETTE, Vol. lii., p. 61.

Alleged right to double commission—Sale of goodwill and letting premises—Alleged custom of Bournemouth and district—Specific agreement.

In this case the plaintiff, a baker and confectioner, of 4, Holdenhurst Road, sued Messrs. Curtis and Son, auctioneers and estate agents, of Bournemouth, for £12 7s. 6d.

The plaintiff carried on a business, and the idea was suggested to him to sell the business, and he agreed to do so. He also stipulated by letter that the commission he had to pay should not be more than 5 per cent. up to £100, and 2½ per cent. afterwards. A Mr. Westmoreland bought the business, and paid a deposit of £30, and the plaintiff, in a letter to the landlord (Mr. G. J. Lawson) indemnified him against any possible claims. The business sold for £350, and out of the deposit in their hands the defendants deducted £11 2s. 9d. for commission on the sale as agreed, and £12 7s. 6d. for 7½ per cent. commission for letting the premises on a lease at a rental of £165, leaving a balance of over £5. The plaintiff demanded the return of the £12 7s. 6d., saying that all he had to pay was the commission on the sale. The defendants pressed their right to the commission on both the sale and the letting, and wrote to the plaintiff to say that it was the customary thing, and that Mr. George Curtis, who had been a magistrate for 20 years, and acted as arbitrator to the courts on occasions, agreed with that view. In his (Mr. Tattersall's) opinion it was excessive, and far more, at any rate, than any lawyer's costs would be.

The plaintiff was called, and bore out the opening remarks. He said that he told Mr. Rodgers, in the employ of the defendants, that he would not sell if he had to pay more than he stated in his letter, and Rodgers said Mr. Curtis would accept the terms. No suggestion was made as to further commission on the transfer of the lease. He agreed to sell the business, fixtures, goodwill, and his interest in the lease. Mr. Hibbs, managing clerk to Mr. Lawson, saw him and told him that the defendants claimed a commission from them for letting the premises, and he gave them the letter referred to. He then went to the defendants and

told them they had no claim on Mr. Lawson, nor any further claim on him, and wished to withdraw the sale. Mr. Curtis, however, said that the business was sold. He refused to give up possession till he received the full amount less the commission he agreed to pay. Mr. Curtis said they would have to expel him if he did not give up possession. An account was made up, and he again refused to pay the extra commission of £12 7s. 6d. In reply to Mr. Trevanion, the plaintiff insisted that he had not been shown the defendants' printed scale of charges till after he had signed the agreement.

The defendants' representative argued that the defendants agreed to the abated rate of commission with regard to the sale of the business, but that the transfer of the lease was quite a separate matter. In spite of knowing that there would be a second commission to pay, the defendants completed the bargain.

Mr. A. J. Rodgers said that both he and the plaintiff understood that the commission referred to was about the sale of the business. He said nothing to him about paying extra for the lease. It was not broached at all.

Mr. Bernard Curtis said it was customary to charge commission both on the sale and the lease. He had been in business 21 years in the district.

Mr. F. Hibbs said that the defendant came to him and asked who was to pay the commission for the lease, and he denied all liability as Mr. Lawson received no benefit.

Mr. T. W. Rebbeck (Messrs. Rebbeck and Sons, auctioneers and house agents, Bournemouth) gave evidence as to the custom of the trade, in favour of the defendants, where there was no agreement to the contrary.

His Honour, in delivering judgment, said the case would turn entirely on the special agreement made, and did not rest on the ordinary terms, or what was customary in the neighbourhood. The judgment would not form a precedent, or touch the question of practice or right under the printed terms issued by the defendants, or custom in the neighbourhood. From the £30 received by defendants they had deducted £12 7s. 6d. for commission under rental on a lease obtained. It was obvious that in a business of that kind the possession of the premises in which it was carried on was essential. He had not the least doubt that when plaintiff wrote the letter of February 15 plaintiff was dealing

320 COMPENDIUM OF COMMISSION CASES.

with the premium to be given by the intending purchaser who took the place all at. His Honour said he could not think that Rodgers brought to the plaintiff's mind that there would be a charge on the first year's rent. It was perfectly plain that plaintiff did not feel inclined to sell except on the special terms in his letter. The defendants had not made out any agreement by the plaintiff to pay the sum claimed, and he gave judgment for the plaintiff for that amount.

Trangmar and Wilshin v. Prickett.

Queen's Bench Division, August 2, 1896.—Before the Lord Chief Justice and a Special Jury.

Reported *ESTATES GAZETTE*, Vol. lii., p. 250.

Disputed introduction—Transactions with companies.

This was an action arising out of the sale of the Lion Mansions Hotel, Brighton, the plaintiffs, Messrs. Trangmar and Wilshin, auctioneers and estate agents, carrying on business at Brighton, claiming to recover an agreed sum of £500 commission for the sale of the Lion Mansions Hotel, of which the defendant, Mr. J. G. Prickett, was proprietor, for the sum of £8,500. In the alternative the plaintiffs claimed £425, being 5 per cent. commission on the sale for introducing the purchaser. The defendant denied that the plaintiffs had been employed to introduce a purchaser, or that they did in fact effect the introduction.

Counsel, in opening the case for the plaintiffs, said that his clients carried on business as auctioneers and estate agents at 96, Queen's Road, Brighton, and the defendant was formerly the proprietor of the Royal Mansions Hotel, Brighton. The action was brought to recover commission for having effected the sale of the Lion Mansions Hotel, the sale of which was not denied, for the sum of £8,500. The question which the jury had to decide was whether the plaintiffs were employed by the defendant, and whether they did effect the sale of the hotel in question, or whether it was brought about by their instrumentality. The matter began in December, 1896, in which month the plaintiffs had an application from a Mr. Simpsner, who said he wanted to buy this hotel. The plaintiffs sent their clerk, a Mr. Cushion, to see the defendant, and the defendant, in the clerk's presence, drew up a document giving particulars of the returns, and stating the price

would be £10,000. In a postscript the defendant added that he was willing to pay £500 on the day that the hotel changed hands at the price stated if they sold the house. Some few days afterwards the defendant wrote to the plaintiffs that as their clerk would not disclose the name of the intending purchaser he should ask them not to sell without disclosing. That matter, however, fell through, and in April, 1897, a lady named Mrs. de Walton got into communication with the plaintiffs. On May 1 the plaintiffs called upon the defendant. The result was that the defendant on May 6, 1897, offered the plaintiffs to sell for £9,000, to include the furniture, fixtures and utensils; consumable stock to be taken at a valuation; the offer to hold good for a month, but the offer not to include furniture belonging to his wife. He communicated with Mrs. de Walton, and this brought that lady into communication with the defendant. Mrs. de Walton next communicated with the De Jersey Company, Limited, of which a Mr. Gallian was managing director. Mrs. de Walton, who was acting as a middle woman with the object of selling to a company, got into direct communication with the defendant, and urged him to urge the De Jersey Company to decide about the purchase before the term of option had expired. On July 3 Mr. Gallian wrote to the defendant asking "to have the option to buy extended, but in his own name, as the company he represented refused to have it in Mrs. de Walton's name." In fact, the lady believed that this company was moving too slowly, and she gave them up. She then got the Empire Syndicate, represented by a Mr. Benson, who was the promoter of a company known as the Brighton Hotel Company, to enter into negotiations for the purchase of the hotel. While she was at Brighton Mr. Benson came down and she introduced Mr. Benson to the defendant, Mr. Prickett. On July 20 Mrs. de Walton got a fresh option, and Benson having thus got into communication with the defendant, the latter renewed the option to Benson, representing the syndicate, on several occasions. Finally the defendant entered into an agreement to sell to the Brighton Hotel Company for £8,500, and the plaintiff claimed commission for having introduced Mrs. de Walton, and through her effecting the sale. The plaintiffs on January 17, 1898, wrote to the defendant, saying that he heard he (Mr. Prickett) had completed the sale, and asking for

322 COMPENDIUM OF COMMISSION CASES.

his cheque in discharge of his commission, but the right to this commission the defendant repudiated, and hence the action.

Mr. James Wilshin, one of the plaintiffs in the case, gave evidence in support of counsel's statement. He had an interview with Mr. Prickett on May 1 and mentioned the name of Mrs. de Walton. The defendant said he had had a letter from her also, but that he would not answer it, and that he (witness) might go on if he thought well. Witness detailed the subsequent introductions and the sale of the hotel to the Brighton Hotel Company, Limited, promoted by the Empire Syndicate.

Mrs. Alma de Walton gave corroborative evidence. She said that the De Jersey Company were promoters, and that she then approached the Empire Syndicate, the idea being to promote a company to take over a large number of hotels in Brighton. Witness had options on a number of them, and gave over her option for the purchase of the defendant's hotel to Mr. Benson. She said that she was to have one-third of the plaintiffs' commission.

After a brief cross-examination the case for the plaintiffs closed, and

His Lordship intimated that he thought it a case in which there should be a compromise between the parties.

After some discussion,

His Lordship entered judgment by consent for the plaintiffs for £325, without costs, one-third of £200 representing commission to be paid into Court, in respect of which Mrs. de Walton might apply.

Marshall v. Sharp.

Manchester Assizes, July 28, 1898.—Before Mr. Justice Bruce and a Jury.

Reported *ESTATES GAZETTE*, Vol. lii., p. 250.

Sale of brewery—Alleged right to commission from both sides.

Mr. William Marshall, estate agent, Preston, claimed commission on the sale of a brewery, public-houses and a cottage, from Mr. John Sharp, a retired publican, formerly of the Railway Hotel, Leyland.

On behalf of the plaintiff it was submitted that he acted as agent for the defendant in respect of the sale of defendant's brewery at Leyland and licensed houses in Leyland, Preston and Higher Walton, and of the

Cornbrook Brewery Company, Manchester, and for this he claimed commission. The defendant denied that he ever authorised the plaintiff to sell the property or that plaintiff had anything to do with the sale.

The plaintiff gave evidence in support of his claim.

Cross-examined: Have you been trying to get commission from both sides?—I asked Mr. Corballis, the managing director of the Cornbrook Brewery Company, to pay me a commission.

To whom did you write first?—To Mr. Corballis.

And when you could not get any out of him, you wrote to Mr. Sharp, didn't you?—I could not write to Mr. Sharp before the matter was complete.

When Mr. Corballis would not give you any commission, you began to write to Mr. Sharp, didn't you?—Yes.

You employed different solicitors in each case, did you not?—Yes.

His Lordship: Do you think it was right to try to get commission from both sides? I don't see how it is possible. The position is wholly inconsistent. The whole idea of an agent acting for the vendor should be to get the best price possible, and of an agent acting for the purchaser to pay as low a price as possible. The very elements of honest transactions demand that.

Plaintiff's counsel: I think you should hear my evidence.

His Lordship: By all means, but take the responsibility yourself.

The cross-examination of the plaintiff was afterwards continued, and when it had proceeded a few minutes the jury desired to know whether the plaintiff thought it was a custom of the trade to get commission from both sides.

Defendant's counsel: It has often been tried on here, but it has never succeeded.

The Plaintiff: If you can get it, of course.

The Foreman: But it is not supposed to be to the knowledge of the vendor and purchaser, of course?

His Lordship: The man who acts for both sides is in an inconsistent position. I have the strongest views upon that question. Addressing the jury, his Lordship added: If you think it impossible for a man who has tried to get commission from both sides to recover from either you will say so.

The Foreman: The jury have made up their minds

324 COMPENDIUM OF COMMISSION CASES.

that they have heard sufficient of this case, but if counsel desires to go on, we are prepared to listen.

His Lordship: I don't see how he can recover. The mere fact that he has claimed commission from the purchaser disentitles him to recover from the vendor. I think it very improper to attempt to get commission from both sides. Though I dare say irregular and dishonest things are done in business sometimes, I don't see how they can be justified whenever they are brought to light. It affects the whole commercial morality of the country. Such things are clearly quite wrong, and I think it is hopeless to press the case any further.

Plaintiff's Counsel: I feel that—notwithstanding the admissions of the plaintiff, which certainly are damaging to him, and about which I had no instructions at all—the evidence I can bring shows conclusively that in this case the vendor put the matter into the hands of this gentleman.

His Lordship: I am assuming that in your favour, but the mere fact that you put yourself into the position of claiming from both sides disentitles you to recovery.

Plaintiff's Counsel: If I have a legal claim for commission from the vendor, the mere fact that I have made a claim on the purchaser surely does not disentitle me to recover? It may prejudice me with the jury.

His Lordship: Much more than that. I don't think it is possible to carry the case any further.

The jury then gave a verdict for the defendant, and judgment was entered accordingly.

Counsel for the plaintiff: Mr. Rhodes; counsel for the defendant: Mr. Shee, Q.C., and Mr. Firth.

Nosotti v. Auerbach.

Queen's Bench Division, November 16, 1898.—Before Mr. Justice Bruce.

Reported *ESTATES GAZETTE*, Vol. lli., p. 867, and Vol. liii., p. 94.

Finding a purchaser who is "ready and willing."

This was an action brought by Mr. C. F. Nosotti, who carries on business at Sloane Street, S.W., as Nosotti and Co., against Mr. Julius Auerbach, of 35, Sloane Gardens, S.W., for commission earned by the plaintiff as estate agent and auctioneer, or, in the

alternative, damages as compensation for such commission.

The facts and arguments sufficiently appear from the judgment.

Mr. Justice Bruce read the following written judgment:—In this case Mrs. Auerbach, acting on behalf of her husband, the defendant, in November, 1897, instructed the plaintiff, who is a house agent, to find a purchaser for the leasehold interest which the defendant had in the house, No. 35, Sloane Gardens, then occupied by him. The price was to be £4,000, and the terms of the plaintiff's remuneration were expressed to be the usual terms. The plaintiff entered the particulars of the house upon his books, advertised the house, and submitted it to several applicants. Until January, 1898, no person was found by the plaintiff prepared to purchase the house on defendant's terms. On January 24, Mrs. Singleton called and made a verbal offer of £3,850. The plaintiff's manager called on defendant on the following day, the 25th, and the defendant said he would not take less than £4,000, and that, in addition, he must have the fixtures paid for at a valuation. Mrs. Singleton agreed to these terms. She was asked on January 26 to state the latest time when it would be convenient for her to take possession, and on the 27th she replied stating that she required possession to be given not later than March 15. When this was communicated to the defendant he refused to accept the offer, and said he could not give possession in March. The defendant, in evidence, set up as a defence that before Mrs. Singleton's offer was accepted he had instructed the plaintiff that he could not give up possession before the end of the London season, but on this point there is a conflict between the witnesses for the plaintiff and the defendant, and as the jury found for the plaintiff on this part of the case I must not now consider it. I must treat the case as if the plaintiff's authority to provide a purchaser for the house had not been limited by any express stipulation respecting the time when possession was to be given. The defendant undoubtedly gave authority to the plaintiff to find a person willing to take his leasehold house on the terms that the premium to be paid should be £4,000, and that the fixtures should be taken at a valuation. The authority was not withdrawn; that is settled by the verdict of the jury. The plaintiff found a person

who was ready and willing to accept the terms mentioned to the plaintiff by the defendant. The question arises, Has the plaintiff done all that he was bound to do to entitle him to a commission? Has he found a person ready and willing to enter into a binding contract on the defendant's terms? Mr. Isaacs, who argued the case for the defendant, said no. The parties, he contended, never were at one with reference to the date when possession was to be delivered. It is true that the contract went off because the defendant would not agree to give Mrs. Singleton possession on March 15. But was the defendant justified in so refusing? When he instructed the plaintiff to take the business in hand he said nothing about the date when possession was to be delivered. I think, therefore, the true inference to be drawn is that the defendant instructed the plaintiff to find a purchaser who was willing to accept his terms on the assumption that the defendant was ready and willing to give up possession within a reasonable time. If the plaintiff found a person willing to accept the defendant's terms, and to take possession within a reasonable time, and to wait for possession for a reasonable time, I think the plaintiff did all he was bound to do to earn his commission. If the defendant, after the plaintiff had found a willing purchaser ready to wait a reasonable time for completion, refused to deliver up possession within a reasonable time, I think this act of the defendant's cannot operate to deprive the plaintiff of his commission. This case does not seem to me to bear any resemblance to the case, "*Grogan v. Smith*," which has been cited. When all the terms of an agreement are stated except the term as to the time when it is to be carried out and there is no expressed stipulation as to time, then in the case of agreements relating to the sale of real property as well as in the case of agreements relating to the sale of personal property, it is an implied term that the agreement is to be performed within a reasonable time. In the present case the plaintiff provided a purchaser who was ready and willing to accept on the express terms stipulated for by the defendant, and who was ready to wait for delivery of possession until March 15 and to take possession then. Now the jury have found that March 15 was a reasonable time to wait for possession to be delivered; the purchaser was therefore ready and willing to give the defendant reasonable time within which to deliver pos-

session and to take possession then. It seems to me that in this case the plaintiff did all that he was bound to do in order to earn his commission. He found a person willing to comply with the express terms imposed by the defendant and with the implied term in respect of the period when possession was to be delivered. There is no question that the usual terms with which the plaintiff was employed by the defendant mean the whole commission, and therefore I think the plaintiff is entitled to recover. Indeed no question is raised as to the amount of commission. There is only one other point I must refer to. Mrs. Singleton, in her letter of January 27, 1898, says, "the purchase of the house is, of course, subject to a surveyor passing it." That I understand to be the usual and ordinary term in contracts of the kind; at all events, no objection was taken at any time to the stipulation, and no point was raised with reference to it, and it was never contended that that stipulation amounted to the introduction of a new term which interfered with Mrs. Singleton's acceptance of the terms imposed by the defendant. Having regard to the finding of the jury, I think I must enter judgment for the plaintiff for the amount claimed.

Judgment was given for the plaintiff, and the decision was subsequently affirmed by the Court of Appeal.

Counsel for the plaintiff: Mr. Witt, O.C., and Mr. C. J. Peile; counsel for the defendant: Mr. R. Isaacs, Q.C., and Mr. Cagney.

Giddy and Giddy v. English and others.

Queen's Bench Division, December 12, 1898.—Before the Lord Chief Justice and a Special Jury.

Reported ESTATES GAZETTE, Vol. lii., p. 1047.

Finding a purchaser—Disputed contract.

This action to recover £345 for commission earned by introducing a purchaser of the estate known as Mount Felix, at Walton-on-Thames, was brought by Messrs. Giddy and Giddy, auctioneers and estate agents, of 4, Waterloo Place, S.W., against five ladies, daughters of and beneficiaries under the will of the late Lady Watkin.

On behalf of the plaintiffs it was stated that three out of the five defendants denied that they employed

the plaintiffs to find a purchaser. The five defendants were sisters, and they became entitled to the property on the death of Lady Watkin. The property had to be sold, and thereupon Messrs. Giddy and Giddy were employed. Mr. O. F. Giddy knew Mount Felix very well, as well as most of the other properties on the Thames, and he also knew of a probable purchaser in Mr. John Mason Cook, of Messrs. Cook and Son, the tourist agents. At first the price asked by the defendants was £25,000, and Mr. Cook offered £20,000 for the residence and 26 acres. In the result a deposit of £2,125 was paid by Mr. Cook, and, as he (Mr. Cook) contended, a binding contract to sell was made for £21,250; of that £20,500 represented the price for the estate, and £750 for the fitted furniture. Unfortunately for the defendants, that contract was not carried out for the reason that, after the proceedings had continued five weeks, and a draft contract of sale had been prepared by the solicitors on both sides, two of the ladies—Mrs. English and Mrs. Eyre Williams—thought that if they held out longer a better price could be obtained. They consulted together, with the result that the sale never was carried out at all. Mr. Cook thought he was very badly treated, because he had practically, but not in law as it turned out, from a business point of view, made a sufficient contract, though not in writing. Mr. Cook brought an action in the Chancery Division against the present defendants for specific performance of the contract, and against Mr. Giddy for breach of warranty of authority. That came to trial in June, 1897, and in the end the learned Judge held that in law there was not a sufficient contract because it had not been put in writing. It was "subject to a more formal contract being prepared," and difficulty arose on the word "more." The decision was appealed against, and the Court of Appeal confirmed the decision. Mr. Cook did not get the benefit of the contract, whilst the action against Mr. Giddy was dismissed with costs; but, as a matter of fact, the authority to negotiate the price was not contested. These ladies were accordingly left with the property, which they thought they could do better with than Mr. Giddy. This led to the estate going into Chancery, and by order of the Court the property was sold by auction in March of this year by Messrs. Farebrother, Ellis and Co., and realised, for over 50

acres, £23,500, whilst the sale which had been negotiated by Mr. Giddy was for £21,250 for only 26 acres, and negotiations were actually proceeding for the sale of another five acres at £1,000 per acre. Although Mr. Cook lost his action, he had been able to benefit by the litigation. Mr. Cook went down to the auction, and bought the whole of this estate for £23,500. It was submitted that the law made the defendants liable for the commission, Mr. Giddy having found a person ready and willing to enter into a contract for £21,250. The answer raised by the defendants appeared to be this. They said, on the pleadings, at any rate, that they never authorised Mr. Giddy to act for them as an estate agent at all, and if he did then the charges were exorbitant. As regarded Mrs. Watkins and Mrs. M. Hornby, the question of authority and employment of Mr. Giddy was not disputed. He did not think the Court would be troubled about the amount of commission, as the charge was less than estate agents were usually allowed, and it was the amount sent by Mr. Giddy at the outset of the proceedings. He should read a few letters showing that Mrs. Eyre Williams not only employed Mr. Giddy, but really she was the chief mover in the whole thing. The husband of Mrs. Ada Hornby wrote giving her assent to the proposed sale, and Mrs. English was present at an interview on July 24, 1896. On May 21 Mrs. Eyre Williams wrote stating that Mount Felix was for sale at £25,000 for 26 acres, and Mr. Giddy replied by enclosing his card of commission charges. On June 10 Mrs. Eyre Williams asked Mr. Giddy to address all letters to Mrs. Watkins, who wrote on June 22 saying it had been very difficult to come to an agreement, but she was able to say that all the sisters were agreed that the last offer of £20,000 should be accepted, but £1,000 or £500 more would console her sisters. Mrs. Eyre Williams said she would agree if the others did, and they did consent. Mrs. English wrote to Mrs. Edgar Watkin consenting, and Mrs. Ada Hornby's husband wrote for her. On June 30 Mr. Giddy wrote to Mrs. Eyre Williams telling her he had accepted the deposit. The quarrel between these five ladies resulted in a tolerable loss over the property. There were interviews at the offices of Messrs. Ince, Colt and Ince, acting for the trustees, and Messrs. Ashurst, Morris, Crisp and Co., who were acting for the five ladies (on

330 COMPENDIUM OF COMMISSION CASES.

July 24, 1896), and no repudiation was made then. Eventually, they refused to sign the contract. The evidence of Mrs. Emily Watkin, taken on commission, was to the effect that all her sisters consented to the sale.

Mr. Osman Frank Giddy, the plaintiff, bore out counsel's opening statement. In respect to a telegram sent by Mrs. English before the deposit was paid, he afterwards reproached her for it, and she suggested that it was only bluff on her part.

This concluded the plaintiffs' case.

On behalf of the defendants, it was urged that no contract for sale with Mr. Cook was ever made, and that the matter never went beyond negotiation.

Mrs. Eyre Williams stated that during the negotiations she held out for a larger sum, and that her consent to the sale for £20,500 was only given conditionally upon her sisters consenting.

Mrs. Ada Hornby, the wife of Mr. A. N. Hornby, stated that she never consented to the sale. She was away from home when the letter asking for her consent arrived. Her husband opened the letter and consented on her behalf, but without her authority.

Both ladies admitted in cross-examination that they had subsequently treated the contract for sale as subsisting.

On behalf of Mrs. Emily Watkins and Mrs. Margaret Hornby, their counsel said that these ladies did not wish to embarrass their sisters by not defending the action, but in their opinion the plaintiff had earned his fee, and he would therefore call no evidence.

The Lord Chief Justice: I am only amazed that the other ladies have thought it right to come to Court to defend the action. Your clients' conduct is in creditable contrast to theirs. These ladies must have been very ill advised.

The jury, who had already intimated their opinion, gave a verdict for the plaintiff for the amount claimed, with costs.

Counsel for the plaintiffs: Mr. Rufus Isaacs, Q.C., and Mr. Morton Smith; counsel for Mrs. J. B. English and Mrs. Ada P. Hornby: Mr. Kemp, Q.C., and Mr. Cagney; counsel for Mrs. Emily Watkins and Mrs. Margaret Hornby: Mr. Reed, Q.C., and Mr. J. E. Bankes; counsel for Mrs. Eyre Williams: Mr. A. Beddall.

Masters and Moon v. Martin.

Weston-super-Mare County Court, January 16, 1899.—Before his Honour Judge Austin.

Reported ESTATES GAZETTE, Vol. liii., p. 132.

Rate of commission—Damages.

Messrs. Masters and Moon, auctioneers, Weston-super-Mare, sued Mr. Thomas J. Martin, draper's valuer, Villa Rosa, The Shrubbery, Weston-super-Mare, for £11 5s., balance of commission on the sale of defendant's house at £1,400.

For the plaintiffs it was stated that the point in dispute was as to whether they were entitled to 2½ per cent. commission on the whole of the purchase money of defendant's house, or 2½ per cent. up to £500 and only 1¼ per cent. beyond that sum. In February, 1898, defendant instructed plaintiffs to let or sell St. Helene, and on April 16 Mr. Moon, having heard of a probable purchaser, went in the morning to see defendant. He met him in Church Road, driving towards town, and defendant expressed his preference for the sale rather than the letting of the property. Moon said, "Of course, you will pay the usual commission?" and defendant replied in the affirmative. On April 18 defendant called at plaintiffs' offices, and suggested that they should get their client to sign an agreement to lease the house with the option of purchase. He asked what the commission would be, and Mr. Masters replied, "2½ per cent." Defendant replied that he had made arrangements with the other agents in the town to accept less commission, and in consequence of this statement plaintiffs agreed to accept 2½ per cent. up to £500 and 1¼ per cent. for the balance of the purchase money. Plaintiffs got their client to sign the memorandum of agreement, and the same evening Mr. Moon took it to defendant, who signed it and also induced plaintiff to sign a paper agreeing to accept the reduced commission. The purchase was completed some time in August or September, and quite by accident the plaintiffs, in conversation with other agents, found, it was alleged, that defendant's statement was a complete fabrication, and, so far from their having made any special arrangements with defendant, he had actually received letters from Messrs. Wansbrough and Messrs. Lalonde, stating their terms to be 2½ per cent. commission on the pur-

chase money. Plaintiffs accordingly sent in their bill on September 21 for the $2\frac{1}{2}$ per cent. commission on the whole of the purchase money. No notice was taken until October, when defendant called at plaintiffs' offices, but plaintiffs were out. Correspondence ensued, plaintiffs asserting that they had been tricked into agreeing to take this reduced remuneration. On October 26 defendant presented his cheque for £25 6s. at the plaintiffs' offices, saying, "You can take it or leave it." Plaintiffs placed this amount to the credit of defendant, and now sued for the balance.

Evidence bearing out the opening state was given.

The defence was a denial *in toto* of any fraud, defendant asserting that he made no agreement with plaintiff (Moon) on April 16 *re* paying the usual commission of $2\frac{1}{2}$ per cent., or that he told the two partners together that the other agents were accepting less, and by this means induced the claimants to do likewise. His version was that the only time the question of commission cropped up was at his house on April 18, when Moon brought the memorandum of agreement signed by the purchaser of St. Helene. Before signing it himself he asked Moon what his commission was to be, and the answer was, "The usual $2\frac{1}{2}$ per cent." He replied that he could do better than that, and Moon answered, "What are you prepared to give?" He (defendant) said " $2\frac{1}{2}$ per cent. up to £500, and $1\frac{1}{4}$ per cent. beyond that sum." Plaintiff said, "I had better take it," and subsequently signed an agreement to that effect, which he (defendant) prepared.

After hearing a considerable amount of evidence, including that of Mr. J. P. Board, the purchaser of St. Helene, Mr. S. Lalonde and Mr. S. L. Wansbrough, and the speeches of the learned counsel engaged in the case,

His Honour, in giving judgment, said the sum at issue was absurdly small, but the issue itself was a most serious one, and he wished most sincerely that the parties had elected to have had it tried by a jury instead of throwing upon him the burden of finding on which side the truth lay in the case. However, they had not chosen to have one, and he must dispose of the matter as best he could. With regard to the case of "*Vernon v. Keys*," quoted by Mr. Vachell, he did not think it was a case in point in this instance, and he considered there was a good case in law; the

measure of damage—if he believed the plaintiffs' story—being the difference between the benefit which would have accrued to them if the alleged agreement of April 16 had been carried out, and the benefit which accrued to them under the substituted agreement, which they said was substituted in consequence of misrepresentation. He thought, therefore, the objection in point of law failed. The matter of fact was much more difficult and much more serious, but on the whole he held that there must be a verdict for the plaintiffs for the amount claimed, with costs.

Counsel for the plaintiffs: Mr. F. E. Weatherly; counsel for the defendant: Mr. Vachell.

Cooper and Son v. Bird.

Reading County Court, January 19, 1899.—Before his Honour Judge Lushington.

Reported ESTATES GAZETTE, Vol. liii., p. 132.

What is finding a purchaser?—Risks taken by agent.

Messrs. J. Omer Cooper and Son, auctioneers and estate agents, Reading, sued Mr. Bird, of Prospect Street, Reading, for £25, being commission in respect of the sale of certain premises in Minster Street, Reading, belonging to Mr. Bird. Liability was disputed by Mr. Bird, who had paid £5 into Court, his contention being that the plaintiffs were not instrumental in effecting the sale.

Mr. J. J. Cooper, a member of the firm, said that the commission on the sale of property to the value of £1,000 was 2½ per cent. Witness saw Mr. Bird in his office several times in relation to the sale of the business. He produced his diary for November, 1896, wherein it was stated that the defendant instructed him to sell the premises in Minster Street, then occupied by Mr. Callow, for £1,200. Witness tried to find a purchaser, but could not do so owing to the condition of the thoroughfare in question at the time, "improvements" being then in progress. He wrote to Messrs. Heelas, Sons and Co., Limited, at the defendant's suggestion, offering them the freehold of the property for £1,200, but the offer was declined. The order to sell the property was not countermanded, and ultimately witness heard that Messrs. Heelas had purchased the property, in June or July, 1898. Witness wrote to Mr. Bird, pointing out that as he introduced the property

to Messrs. Heelas he was entitled to his commission, which, however, defendant declined to pay, on the ground that he did not understand that if he sold the property himself he would have to pay the full commission.

Cross-examined: Bird said that witness did sell the property, as he wrote to Messrs. Heelas himself. Defendant did not turn round and say to Mr. Moule (witness's clerk) that he withdrew the property in August, 1897. Witness offered to accept £12 10s., under the circumstances, but without prejudice, but told Bird that if he did not pay that sum the original claim would remain good against him.

Mr. Daniel Heelas, a director of the company, and two clerks in Messrs. Cooper's office, also gave evidence for the plaintiffs, and after a long legal argument,

His Honour, in giving judgment, said that the case was a very interesting one to lawyers, the law affecting the case being very peculiar—extremely strict in one sense and extremely elastic in another. As to commission, the general law might be stated that if property was put in the hands of an agent to sell on commission he would be entitled to that commission if he introduced a properly solvent purchaser. If, however, instead of finding a purchaser, he found somebody who, on his own account, found a purchaser, the agent was not entitled to his commission, because he did not find the actual customer. Commission was an exceptional reward, and could only be allowed in cases where certain conditions were fulfilled—it was a risk which the agent took; he went for the chance of a good thing, and if he failed he failed. He had already pronounced in favour of the plaintiffs on the point that the instructions were not revoked, and he also found distinctly in favour of the plaintiffs on the point that there was no break of continuity, that there was no new departure. But as to the facts, on which the cast must depend; the defendant asked Messrs. Cooper to write to Messrs. Heelas for him, naturally wishing that it should go through an agent, as he was related to one of the partners, but he was not particular who bought the property provided he got his purchaser. A difficult point, in his judgment, was the inference that supposing Messrs. Heelas purchased they would not have been found by the agents, but were really found by Mr. Bird himself. Another point in the case was that the plain-

tiffs wrote to Messrs. Heelas and Co., who declined. No doubt Mr. D. Heelas and his brother purchased with the view that the company might eventually require the premises, but they did not buy in the name of the company, nor were they authorised by the company, in any way. That raised another point which might be formulated thus—that the agents never found a purchaser. They applied to Heelas and Co., who did not buy; they did not apply to Messrs. Heelas, who did buy. These were both difficult points, and he chose the easiest, which was the last, to decide; and he thought that went against the agents. He quite agreed, however, that it was a matter for argument. He really did not know how he should decide the other point if he were pressed. He must, however, decide against the plaintiffs as to the commission. They were certainly employed to write the letter, although he did not know he could say that it ultimately profited the owner in the strict sense of the term. Of course, it was in consequence of that letter to Heelas and Co. that Heelas Brothers became aware that the place was for sale, but still he thought all the plaintiffs were entitled to was the cost of the letters they wrote, and the interviews they held. He gave judgment for the plaintiffs for five guineas, with costs up to the payment into Court, the subsequent costs being awarded to the defendant.

Cox v. Cardinall.

Queen's Bench Division, February 1, 1899.—Before Mr. Justice Darling and a Jury.

Reported *ESTATES GAZETTE*, Vol. liij., p. 180.

Limit as to time—Alleged exclusive right to deal with property.

The plaintiff was suing for commission for finding for the defendant a purchaser for the Donyland Brewery, Colchester, at the price of £90,000. The defendant pleaded denying that any such commission was due.

It was alleged that on April 19, 1898, the defendant wrote to the plaintiff, in reference to his procuring a purchaser for the brewery; and on May 13 following the defendant wrote to the plaintiff, Captain Sir Hawtrey Cox, Bart., saying that in consideration of his introducing a purchaser for the brewery he was willing to pay him 2½ per cent. upon the purchase money, provided that the whole matter was carried through

336 COMPENDIUM OF COMMISSION CASES.

within a specified time. The plaintiff introduced at first Major Tighe, but that proposed purchase was not carried through. After that the plaintiff, having said that he had another proposed purchaser, the time of his commission note was extended until June 22, and he introduced to the defendant Messrs. Hope and Robinson, as proposed purchasers of the brewery. They were willing to purchase the brewery for £90,000, but before the contract was concluded with them, and before the expiration of the time mentioned in the commission note had expired, the defendant effected a sale of the brewery to another person, and the plaintiff did not get the commission, which, it was submitted, he had earned.

Captain Sir Hawtrey Cox, Bart., the plaintiff, gave evidence in support of his case. Among other things he said that he called upon the defendant in Cornhill, and that a brother officer of his knew somebody who wanted to buy a brewery. The price then asked was £100,000. On May 13 he took Major Tighe to the defendant's office and got a commission note from defendant. Upon that occasion the defendant gave him a commission note to extend to 14 days. Later on the time was extended for seven days, and afterwards for another period, which would expire on June 22. He next saw the defendant on June 9, and introduced to him Messrs. Hope and Robinson, who had proposed to purchase the brewery at £90,000. The defendant, however, wanted a deposit of 10 per cent., whilst Messrs. Hope and Robinson proposed to pay only 5 per cent. Messrs. Hope and Robinson asked for a delay of two hours that they might consult those whom they represented, but the defendant said "No," and that the brewery might be sold at any moment. Witness heard no more of the matter until June 11, when the defendant wrote to say that the brewery had been already sold, and asking him to give notice of this to those gentlemen whom he had introduced. The plaintiff replied to this letter, expressing his surprise at what had been written to him, and saying that the matter had been left in his hands until June 22.

Mr. Edward Willis said that he was a partner in the firm of Hope and Robinson, and traded under the name of Hope. On June 8 he went to the defendant in Cornhill with reference to the purchase of the brewery for a client. No exception was taken to the price named, and he said to the defendant upon the 9th that

their clients would entertain the matter. On the 10th he saw the defendant again, and asked for two or three hours' more time to see his people, who, he said, entertained the proposal, and who he believed would buy the brewery. The defendant asked if they were prepared to pay down a deposit then. If so, he would take it, and the property would be sold, as it must be sold. He again saw the defendant on the 13th, when he said that the brewery had been sold.

In cross-examination, the witness said that certain portions of the £90,000 were to be taken in debentures and in ordinary shares.

For the defendant it was submitted that no final agreement to sell had been come to, and that the plaintiff had made out no case.

For the plaintiff it was contended that he had an exclusive right as to finding a purchaser for the brewery down to June 22.

Mr. Justice Darling did not think that the commission note gave the plaintiff an exclusive right to deal with the sale of the brewery down to June 22. When the plaintiff on June 10 asked for a short time to consult his principals, the defendant said "No; not for two hours, because the brewery might be sold at any moment." He gave judgment for the defendant.

Counsel for the plaintiff: Mr. Neilson; counsel for the defendant: Mr. Bray, Q.C., and Mr. R. A. Turner.

May and Rowden v. Schrieber.

Westminster County Court, January 18, 1899.—Before his Honour Judge Lumley Smith.

Reported *ESTATES GAZETTE*, Vol. lili., p. 173.

Denial of liability—Commission alleged to be due from company.

This was an action by the plaintiffs, Messrs. May and Rowden, house agents, of 39, Maddox Street, Regent Street, to recover the sum of £20 12s. 6d., commission at the rate of 7½ per cent. on the letting of the ground floor and basement of No. 80, Wigmore Street, Cavendish Square.

It was said that in February, 1898, the defendant called upon his clients and gave them instructions to procure a tenant for the premises in question, which comprised the ground floor and basement of No. 80, Wigmore Street. The matter was duly placed upon

338 COMPENDIUM OF COMMISSION CASES.

their books, and in the ordinary course of business an order to view was given to a Mrs. Orme and Miss Hayes, who wanted some premises for the purpose of carrying on a dressmaking business. Nothing more took place until the following November, when the plaintiffs found out that the two ladies whom they had introduced were in possession of the premises, and carrying on business under the style of Madame Leslie. Upon making further enquiries the plaintiffs found that their clients had taken a 16 years' lease of the premises at a rental of £275 a year, and that the tenancy was created through their introduction. They then applied to the defendant for payment of their commission, but he repudiated liability on the ground that he gave instructions on behalf of the Schrieber Pianoforte Company, of which he was a director.

Mr. May was called, and said that he was a member of the plaintiff firm. On February 3, 1898, the defendant called upon him and instructed him to find a tenant for the premises. He said nothing about representing a company, and he (witness) looked upon him as a principal. Shortly afterwards he gave an order to view to Mrs. Orme and Miss Hayes, and it was not until the following October that he discovered that they had become tenants.

Cross-examined: He had no recollection of anything having been said by the defendant as to his representing a company.

Mrs. Orme was called, and said she certainly took the premises through the introduction of Messrs. May and Rowden.

The defendant, Mr. Richard Schrieber, was called, and said it was not until a claim was made upon him for commission that he had any idea that the plaintiffs had introduced the tenant, and even if that was so he contended that he was only a director of the Schrieber Company, and gave the plaintiffs their instructions in that capacity. He was quite sure that he told the plaintiffs he was acting on behalf of the company. If he was liable he did not dispute the amount of plaintiffs' claim, but his case was that he was not liable.

Cross-examined: His interest in the company was 5,000 shares out of 10,000.

His Honour said he thought the defendant was liable, and gave judgment for the plaintiffs for the amount claimed, with costs.

Hazell v. Scott.

Queen's Bench Division, May 5, 1899.—Before Mr. Justice Bruce.

Reported ESTATES GAZETTE, Vol. llii., p. 761.

Denial of employment—Custom alleged.

In this action Mr. Frederick Hazell, auctioneer and house agent, of 117, Victoria Street, S.W., claimed £41 5s. as commission earned on letting the mansion, No. 38, Hyde Park Gate, from Mrs. M. A. Scott, a widow.

From counsel's opening statement, it appeared that on October 15, 1898, the plaintiff wrote to the defendant stating that he had a client who was anxious to obtain a flat in Hyde Park Gate Mansions, and asking for full particulars and instructions. Mrs. Scott sent the letter back, with a note to the effect that the sub-lease would be £550. On October 27, Mr. Hazell called on the defendant, but the servant said her mistress was deaf, and being her confidential maid, would take any message. Mr. Hazell told the servant to ask Mrs. Scott if he could act for her in disposing of her lease for the flat. The servant, on her return, said, "Yes," and added that she was to show him over the rooms, and that Mrs. Scott wished certain fixtures to be taken at a valuation. After viewing the flat, he requested the servant to ask when it would be convenient for him to allow Mrs. Cook, his client, to view. The servant, on her return, said, "Mrs. Scott says 11 o'clock to-morrow morning." The plaintiff afterwards wrote to the defendant that he had placed the particulars before Mrs. Cook, and asked her to call at 11 o'clock, "as arranged by you." Mrs. Cook inspected the flat on the following day, and on October 31 plaintiff wrote stating that she had settled to take an assignment of the lease and fixtures. On November 2, however, the defendant wrote to him stating that the flat was "not to let," and plaintiff thereupon claimed his commission.

For the plaintiff it was contended that the later letters showed there had been employment of the plaintiff by Mrs. Scott, and counsel wished to call expert evidence to show that it was the usage and custom of the profession for the lessor to pay commission in such circumstances.

His Lordship refused to allow such evidence to be called.

The defendant's counsel urged that his client had

340 COMPENDIUM OF COMMISSION CASES.

not the smallest notion of employing the plaintiff, and merely gave him particulars for his client.

His Lordship held that there was no evidence of any employment, and dismissed the action, with costs.

Among the witnesses retained for the plaintiff were Mr. Joseph Stower, surveyor, of 43, Chancery Lane; Mr. W. Roland Peck, F.S.I. (Messrs. Hampton and Sons); and Mr. Percy Rogers (Messrs. Rogers, Chapman and Thomas), whilst Messrs. Farebrother, Ellis, Clark and Co. were concerned for the defendant.

Counsel for the plaintiff: Mr. Willoughby Williams; counsel for the defendant: Mr. Willes Chitty.

Challen v. Silcock.

Queen's Bench Division, May 12, 1899.—Before Mr. Justice Bigham.

Reported *ESTATES GAZETTE*, Vol. liii., p. 861.

Commission note—Alleged condition.

The plaintiff claimed to recover £300 commission on the sale of the Star and Garter, Putney.

On January 27, 1898, the plaintiff met the defendant, Mr. Silcock, a licensed victualler. The defendant said he was anxious to purchase the Star and Garter, at Putney. The plaintiff was instructed by Mr. Silcock to see if he could get a figure fixed for the house, and he promised to pay him commission if a sale was effected. There was a gentleman named Mr. Cecil White with whom the plaintiff was acquainted, and who knew Mr. Davis, the proprietor of the Star and Garter, and Mr. White acted as the plaintiff's agent in the matter. Communications passed between the parties which culminated in the house being sold. Subsequently the plaintiff and defendant met and discussed the matter, when the plaintiff said he would have to pay Mr. White £250. The defendant then said to the plaintiff, "What commission would satisfy you?" and "Would £300 do?" The plaintiff replied it would. Consequently a commission note was drawn up by the defendant. The defendant afterwards said that the price was too high. Negotiations then took place between Mr. Challen and Mr. White, and the defendant said he thought the matter had better rest a little, probably thinking that a lower price would result. In November the plaintiff heard that the defendant had purchased the house. Thereupon he went with Mr.

White to the defendant and asked for his commission, when the defendant turned on him and declared that he never had any communications with him, and had given him no note or promise.

The plaintiff having restated the above facts, was cross-examined. He said he was not aware that it was a notorious fact that the Star and Garter was to be sold. He knew the house was offered for sale by auction, but that it was not sold. He did not get a lower price for the house than £35,000.

The defendant said that at the first interview the plaintiff informed him of the price of the Star and Garter, and said he could not think of buying the house at that price, £35,000. He gave no instructions to the plaintiff to make enquiries about the house, but subsequently he suggested £15,000 as a more reasonable price for it. He gave the plaintiff the commission note in question. That was in February, 1898, and in August he bought the Star and Garter, but he did not see the plaintiff again from that time until September, when he applied for his commission. The plaintiff had nothing whatever to do with the sale, and subsequently when the plaintiff asked for his commission he forgot he had given him a commission note. Further it was said that the note was given to the plaintiff on the condition that the house be sold at the price of £15,000.

Mr. Justice Bigham said that the commission note was quite clear, and gave judgment for the plaintiff for the amount claimed.

Mr. Kemp, Q.C., and Mr. S. Keayes appeared for the plaintiff; whilst the defendant was represented by Mr. Bowen Rowlands, Q.C., and Mr. O. Rose-Innes.

Winckworth v. Ellis, Clarke and Co.

Clerkenwell County Court, May 11, 1899.—Before his Honour Judge Edge.

Reported *ESTATES GAZETTE*, Vol. lili., p. 861.

Deposits and commissions—Alleged custom—Notoriety.

Mr. Thomas Winckworth, hotel proprietor, 97, Streathbourne Road, Tooting, sued Messrs. Ellis, Clarke and Co., auctioneers, of 11, Southampton Row, W.C., for £21 15s., money received by the defendants for the use of the plaintiff, and being deposits on the sale of Nos. 403, City Road, and 22, Pentonville Road.

The particulars of the plaintiff's claim were:—1899, to deposit on the sale of the Royal Hotel, 22, Penton-

342 COMPENDIUM OF COMMISSION CASES.

ville Road, £25; the like on the Imperial Hotel, City Road, £25; less commission on £325, sale price of the Royal, £16 5s.; commission on £240, sale price of the Imperial, £12; total, £28 5s.; leaving the amount now sued for, £21 15s.

Mr. Shearman Turner said the only issue between them was as to two items.

Plaintiff said he had a conversation as to the commission to be paid, and the defendants said they would arrange 5 per cent. on the purchase money. He had not a lease of the premises, but the agreement was subject to the option of taking the lease.

Evidence was also called as to payment of deposits and commission to the defendants.

Mr. Shearman Turner said the matter had been before the Institute of Estate and House Agents.

The Judge said he knew there was such an institute, but their decisions were no more binding than the decision of the man in the street. If there was a custom in any business they must prove that it was such a custom that everyone knew it. If they wanted to rely on the scale of the institute, the defendants should have put it in their circulars, and then persons could inquire what the scales were. He held very strongly that before a person could charge in a case of that kind the universal custom must be proved clearly to exist in that particular business, so that everyone knew what it was, and they must disclose what they were going to charge.

Evidence was called for the defendants as to their charges, but his Honour entered a verdict for the plaintiff for the amount claimed, with costs.

Mr. Liversedge was counsel for the plaintiff; and Mr. Shearman Turner for the defendants.

Longman v. Bright.

Uxbridge County Court, May 2, 1899.—Before his Honour Judge Marten.

Reported *ESTATES GAZETTE*, Vol. liii., p. 861.

Introduction—Letting house—Subsequent sale—Separate transactions.

In this action the plaintiff, Albert Thurston Longman, a house and estate agent, of Northwood, claimed from the defendant, Mr. John Henry Robert Bright, of 10A, Great Portland Street, London, £56 16s. 3d., commission for the introduction of a purchaser to the defendant of Frith Lodge, Northwood.

It was stated that the defendant, Mr. Bright, was the late owner of Frith Lodge, Northwood, and in the year 1894 the plaintiff and defendant were in communication with each other as to the letting or sale of that property. Several letters passed between them, and in June, 1894, at defendant's request, the terms on which he would sell his property were entered on plaintiff's books. Subsequently Mrs. Lennox Browne called upon plaintiff, and asked him if he had a property which he could recommend to her, and which would suit her requirements. The outcome of that was that Mrs. Browne and Dr. Lennox Browne came to Northwood, and, accompanied by the plaintiff, went over the premises. His Honour should be informed that at that time defendant was residing at Frith Lodge, and the arrangements were that no one should be shown over the house except by appointment. Therefore plaintiff informed defendant that on a certain day he would bring Dr. and Mrs. Lennox Browne to look over the house. They were driven to the defendant's house, and they were shown over the premises by defendant's wife, Mrs. Bright. The result being that Dr. Lennox Browne took the premises furnished at three guineas per week for 12 months. With respect to those arrangements plaintiffs sent in an account for letting the premises, and received from him a cheque for commission amounting to £8 3s. 9d. Some time afterwards it appeared that the defendant and Dr. Lennox Browne arranged between themselves that the house should be sold, and it came to the defendant's knowledge that Dr. Browne had purchased this property. Plaintiff therefore thought that he was entitled to the commission on the sale of the property, and that was the subject of the action. The plaintiff's representative said that he did not know whether the facts were in dispute, but he claimed that the plaintiff had only to show employment of a more or less general character to entitle him to a commission on the sale, and it might either be direct or implied. He contended that the plaintiff was entitled to recover the amount for which he sued. He called

The plaintiff, who gave evidence in support of the opening, and was cross-examined at length.

For the defence, Mr. John Henry Robert Bright, of 10A, Great Portland Street, London, deposed that he lived at Frith Lodge about five years ago. He wanted

to sell the estate, and he had photographs of it on several Metropolitan stations, and a photograph of it was also at Northwood station in the booking office, stating that it was to be let on lease or sold. Plaintiff wrote to him for particulars, and he had similar applications from many others. He gave particulars to Mr. Longman, and enclosed a plan, as he stated that he had applicants for whom he required particulars. He never said a word to plaintiff except a passing "Good morning," and he had never had an interview with him on May 27, as suggested by plaintiff, and had never done any business with him. He was perfectly clear on that subject. Since he had advertised the property he had been inundated with letters on the subject. He generally sent a printed list of particulars to every applicant, and he sent one to plaintiff in the usual way. Dr. Lennox Browne was introduced by Mr. Longman, but all subsequent negotiations were between defendant and Dr. Lennox Browne, who came to him after the first introduction. There was no question at that time of Dr. Lennox Browne becoming a purchaser. After becoming a tenant, Dr. Lennox Browne became friendly with him, and when he knew that he had had a definite offer from Mrs. Chester, Dr. Browne asked him not to sell it until he had heard from him. He agreed ultimately to become the purchaser rather than be turned out. Mr. Longman had nothing whatever to do with the purchase of it. There was a claim for commission. In 1898 plaintiff wrote asking for commission, and he paid the amount claimed, and as he had rendered him a service he paid him £8 3s. 9d.

By Mr. Bird: He knew that plaintiff was an agent, as he wrote asking for particulars for other people, but he had no idea that by sending them he was making him his agent. He had never let land through agents without giving a commission. Messrs. Debenham, Tewson and Co. were his appointed agents, with whom he had a sort of contract. He did not dispute the commission charged, as he had rendered him a service. He made no objection, and it did not occur to him to send and tell plaintiff when he paid it that it was a present. He had heard that Mrs. Lennox Browne had been written to asking whether the property had been sold, and at what price? He did not know that plaintiff had had any commission from anyone else for the selling of this property. Dr. Lennox Browne, when

the purchase was completed, asked that the photographs might be taken down from the stations. He agreed that plaintiff introduced Dr. Lennox Browne to him, but he never let him know that the house had been let, nor had he sent his son to tell him so.

Mrs. Emma Bright, wife of the last witness, deposed that on May 27, 1894, she was at home, but she did not remember seeing plaintiff. Mrs. Lennox Browne came to Frith Lodge on January 15, 1898, and she showed them over the house. Nothing was said on that occasion of their becoming purchasers; they were only looking it over as possible tenants. She also showed them over the grounds, and plaintiff took no part in the conversation.

By Mr. Bird: Plaintiff brought Dr. and Mrs. Lennox Browne to Frith Lodge on January 15, 1898, but she said nothing to him.

Mr. Frank Bright, the son of the defendant, also gave evidence, as also did Dr. Lennox Browne, and after having heard the speeches of the legal representatives of the parties,

His Honour, in the course of a lengthy summing up, said the defendant had an estate to let at Northwood, and in June, 1894, sent plans of the same to plaintiff, at his request. Plaintiff further stated that he went up to see defendant, and that in the course of a conversation between the parties defendant agreed to pay the usual commission. Defendant, on his part, denied that the plaintiff ever came near the place, or that any conversation took place between them, or of any commission being agreed upon. Defendant further said that the letters containing the particulars as to letting the property was sent to plaintiff in a similar way as they were sent to several other persons, and that there was no suggestion that he was the agent for letting the property. In the beginning of the year 1898 plaintiff wrote a letter to defendant asking whether the Lodge was to be let furnished, and asked that a reply might be sent by return of post. On the same date a letter in answer to that was sent saying that Frith Lodge was to be let or sold. On January 15 Dr. and Mrs. Lennox Browne were introduced by plaintiff, and as a result the house was let for one year from February 3, 1898, to Dr. Lennox Browne. The agreement of letting did not contain any clause with regard to the purchase, as Dr. Lennox Browne stated that he did not wish

346 COMPENDIUM OF COMMISSION CASES.

to purchase at that time, but as he afterwards learned that he would either have to purchase or turn out, he agreed to purchase, and it was ultimately carried out. After the letting plaintiff claimed commission on it, which was paid. It was said that he was recognised as an agent, which entitled him to claim commission on the purchase, but there was no foundation for that claim. In February, 1898, a claim was made for the introduction of a tenant to Frith Lodge, and that was paid on March 18. There was no suggestion that there was anything more at all, and it seemed to him that the transaction was then complete. There had been no intimation that there might be a claim on any subsequent sale, but the recognised claim was made for commission on letting, and it was a long time after that before any new transaction arose. As to the question of employment. In 1894 letters were written to many persons who were making enquiries about the property, plaintiff amongst the rest, and there was nothing to show that he was acting as agent, or that he was entitled to charge commission. Plaintiff had not made out that the conversation took place where the defendant recognised him as a person who was entitled to claim commission. Dr. Lennox Browne had contradicted the evidence on material points, and he could not place any reliance on the plaintiff's statement. An agent should make perfectly clear what he was doing. Defendant was sending the particulars of this property out to anyone who applied, and they were sent to plaintiff in the same way as to other people. There was no general employment, which was finished by the charge which was made for the first commission. What was done afterwards plaintiff had nothing to do with at all. The action must be dismissed with costs.

Warlters and Co. v. Marshall.

Queen's Bench Division. June 15, 1899.—Before Mr. Justice Wills and a Jury.

Reported: *ESTATES GAZETTE*, Vol. liii., p. 1059.

Material information leading to business—Commission recovered.

Messrs. Warlters, Lovejoy and Telfer, public-house brokers, auctioneers, and valuers, 9, Southampton Street, W.C., sought to recover from Mr. George Marshall, Bickenhall Mansions, Gloucester Place, W., formerly owner of Fagg's White Hart Hotel, Margate,

the sum of £313, alleged to be due to them on the sale of the hotel mentioned.

According to the plaintiff's case, the defendant, Mr. Marshall, had an interview with Mr. Telfer, the senior member of the firm, on February 28, 1898, and instructed them to sell Fagg's White Hart Hotel, Margate. The price mentioned was £17,000, and it was arranged that the plaintiffs should receive a commission of two per cent., and their out-of-pocket expenses. They subsequently advertised the property for sale by public auction, at the Masons' Hall Tavern, and on March 3 received a letter from Messrs. James and Sidney Motion, public-house brokers, of Moorgate Street, asking for particulars, and in reply a printed circular was forwarded giving full particulars, including the term of the lease, returns, etc. Messrs. Motion soon afterwards telephoned for further information and the terms of the first mortgage. The hotel was submitted to auction at Masons' Hall Tavern on March 29, but there was no offer. The defendant gave the plaintiff fourteen days more in which to find a purchaser, and at the end of that time he withdrew their retainer, and asked for the return of all books, balance-sheets, etc. The plaintiffs afterwards sent in an account of their out-of-pocket expenses, which were paid. On April 14 the defendant received a letter from Messrs. Motion informing him that they had a client who wished to purchase the property, and was desirous of knowing the net profits and outgoings. In reply, the defendant wrote informing Messrs. Motion that he had taken the property from the plaintiff's hands, and withdrawn it from sale, but if the client referred to had not been previously approached by the plaintiffs, there was nothing to prevent them taking over the matter themselves. The property was soon afterwards sold by Messrs. Motion to a Mr. Mills for £15,650, and as soon as the plaintiffs were informed of the transaction they communicated with the defendant, informing him that inasmuch as they had introduced the property to Messrs. Motion, they were entitled to their commission. The claim was disputed, hence this action.

Mr. Frank Telfer, senior partner in the plaintiff firm, gave evidence bearing out the above facts.

Cross-examined: It was not a fact that the arrangement made between him and the defendant at the first interview was that he was to get two per cent. commission

348 COMPENDIUM OF COMMISSION CASES.

if he sold the property for £17,000, and 1½ on any less sum. It was usual to accept a lower rate of commission under such circumstances, but in this instance nothing was said about the property being sold for less than £17,000.

Mr. W. J. Mills, hotel proprietor, stated in evidence that he purchased the hotel for £15,650, through the introduction of Messrs. Motion, whom he had employed to find him a house. Messrs. Motion had been acting for him ever since he had been in business. They brought the house under his notice some time in the early part of April, but he could not give the exact date.

Cross-examined: Witness requested Messrs. Motion to find him a house in November, 1897. Between that date and April, 1898, about a hundred houses were brought under his notice. Acting on the advice of Messrs. Motion, he went to Margate and looked over the property himself.

This being the case for the plaintiff,

For the defendant it was said the jury would be asked to draw an inference upon the respective shares which Messrs. Motion and the plaintiffs had in the selling of the property. Mr. Marshall, against whose conduct there was no complaint whatever, had, in the exercise of his judgment, come to the conclusion that it was Messrs. Motion who had introduced the purchaser, and that they were therefore entitled to the commission. The jury would have to decide whether or not that view was the correct one.

Mr. George Marshall, the defendant, having given evidence in support of counsel's statement,

Mr. James Motion, senior partner in the firm of James and Sidney Motion, public-house brokers, auctioneers, and valuers, of 58, Moorgate Street, E.C., said that in May, 1897, Mr. Marshall sent him certain information about Fagg's White Hart Hotel, Margate, and in that year Mr. Mills came to ask them to find a public-house for him. They sent him particulars from time to time of over 100 different houses, the White Hart among them. On March 1, 1898, they wrote calling his attention to the property, and witness was perfectly certain that when writing this letter he had not seen the plaintiffs' advertisement of the house which appeared on the same day; that was merely a strange coincidence of dates. On March 3 he did ask the

plaintiffs, who had been instructed to sell the White Hart, for particulars, and next day telephoned for the price and mortgage, but he never communicated those particulars to Mr. Mills, but only to a Mr. Heath, with whom negotiations proved abortive. The withdrawal of authority by the defendant from the plaintiffs was on April 11, and on May 11 he wrote to Mr. Mills asking if he was inclined to do anything with the White Hart, as Mr. Marshall had called to remind them he was still there and unless the house was sold at once he should withdraw it entirely from the market. A few days afterwards Mr. Mills went down to Margate, and ultimately became the purchaser. On May 14 Mr. Marshall wrote referring to the withdrawal of authority from the plaintiffs, and asking if their (Messrs. Motion's) client had approached the plaintiffs in the matter, otherwise there was nothing to prevent witness from doing the whole of the business, and witness wrote back stating that the plaintiffs had merely sent them particulars, as they had probably done the same to every other broker in existence. He never mentioned to Mr. Marshall that he got any particulars from the plaintiffs; these negotiations with Mr. Mills were three months afterwards.

The learned Judge pointed out one or two points of similarity between the letter of March 1 and the plaintiffs' advertisements.

For the defendant it was contended that Messrs. Telfer had not supplied any exclusive information, and that the letter of May, 1897, gave Mr. Motion all the necessary information upon which Mr. Mills acted.

For the plaintiffs it was argued that there was a clear chain of evidence to prove that Mr. Mills got the whole information through their agency.

His Lordship, in addressing the jury, said the question to be decided was whether the jury thought the negotiations had really been dropped when the authority of the plaintiff was withdrawn, or whether the material information was procured from the plaintiffs during the time Messrs. Motion was acting for Mr. Mills.

The jury returned a verdict for the plaintiffs for £234 15s., commission at the rate of 1½ per cent.

His Lordship gave judgment accordingly.

Counsel for the plaintiffs: Mr. Dickens, Q.C., and Mr. C. C. Scott; counsel for the defendant: Mr. Lawson Walton, Q.C., and the Hon. Alfred Lyttelton.

Fromelius v. White, Druce and Brown.

Westminster County Court, June 23, 1899.—Before his Honour
Judge Lumley Smith.

Reported ESTATES GAZETTE, Vol. liv., p. 33.

Rate of commission disputed.

In this case plaintiff, lessor of premises known as No. 37, Sloane Street, sued the defendants, house agents, of 9, Brook Street, W., to recover a sum of money which they held as a deposit for introducing a purchaser for the lease of the premises in question.

In stating the facts of the case, it was said that in May of last year the plaintiff was desirous of disposing of his interest in the lease of the premises in question, and was approached by the defendant firm, who informed him that they thought they could introduce a likely purchaser. The terms asked by the plaintiff were a premium of £800, and a rental of £300, but the premises were subsequently sold subject to a premium of £775 and a rental of £350. A sum of £75 was paid to the defendant by the purchaser by way of deposit, and it was in respect of this amount that the present action was brought. The plaintiff's case was that the defendants agreed to carry out the sale subject to a commission of $2\frac{1}{2}$ per cent. on the sum realised, whereas they had charged $7\frac{1}{2}$ per cent. on the premium, and 5 per cent. on the first year's rental, making in all a sum of £65, and after deducting that amount they tendered the plaintiff the balance of £10, but it was refused, and had since been paid into Court.

His Honour said he thought, in view of the nature of the dispute, that the defendant's evidence had better be taken first.

Mr. Handsley was accordingly called, and said he was a clerk in the employ of Messrs. White, Druce and Brown. In May of last year they had a client who was looking about for premises in the locality of Sloane Street, and in due course they brought the plaintiff's premises before his notice, and finally succeeded in bringing about a sale. Before that was done, however, plaintiff was informed that the commission would be $7\frac{1}{2}$ per cent. on the premium and 5 per cent. on the first year's rental, and those terms were distinctly agreed upon. They were the usual terms charged by West End house agents, and were by no means excessive.

Mr. A. Waghorn, of the firm of Arber, Rutter and Waghorn, 1, Mount Street, W., was called as a witness for the defence, and gave it as his opinion that the defendants' charges were perfectly fair and reasonable, and such as were usually charged in the profession.

This evidence was corroborated by Mr. Boyton (Elliott, Son and Boyton, 6, Vere-street, W.) and Mr. W. Brown, a member of the defendant firm, both of whom agreed that they were the proper charges.

On behalf of the plaintiff evidence was called with a view to showing that $2\frac{1}{2}$ per cent. would have been a fair commission to charge in a case of this kind.

His Honour said if that was so it was not his experience, and in view of the evidence given by the three gentlemen who had been called for the defence, he could not come to that conclusion, therefore, judgment would be for the defendant, with costs.

Mr. Cohen was counsel for the plaintiff, and Mr. Rose-Innes appeared for the defendant firm.

Piercy v. Seaward.

Queen's Bench Division, June 30, 1899.—Before Mr. Justice Ridley.

Reported ESTATES GAZETTE, Vol. liv., p. 63.

Mis-description of property—Head-lease and sub-lease.

In this case the plaintiff, Mr. George Piercy, house and estate agent (of Messrs. G. Piercy and Co., 19, Maids Vale, and 13, Clifton Road, W.), claimed £100 as commission earned on the introduction of a purchaser of the head lease of the Swan and Sugarloaf public-house, Fetter Lane.

The defendant was the lessee of the Swan and Sugarloaf public-house, in Fetter Lane; the freeholder was Mr. Gibbon, who granted a lease, which ultimately came into the hands of Messrs. Truman, Hanbury and Co., the brewers. The property was sub-leased as tied to the brewers to Mr. Seaward, but the latter also obtained an assignment of Messrs. Truman and Co.'s own lease, in the name of Mr. Procter, a gentleman who signed a document stating that he (Procter) held Messrs. Truman's lease in trust for Mr. Seaward. The defendant was anxious to sell these premises, and in September, he asked Mr. Chaplin, a solicitor, to get a purchaser

352 COMPENDIUM OF COMMISSION CASES.

for the premises. Mr. Chaplin told Mr. Piercy that the defendant wanted to sell the property, and that a commission would be paid if he succeeded in finding a purchaser. On September 6, Mr. Chaplin wrote, giving particulars to the plaintiff. The sub-lease was held for 90 years from 1890, at a rent of £200; the three upper floors were let at £100 a year, whilst the whole building was held for 99 years from 1890, at £150 a year, and the property was worth £3,250. On October 14, Mr. Piercy obtained an offer of £2,750. Mr. Chaplin took the plaintiff round to Mr. Procter, who was managing some property for the defendant. On October 14 the defendant himself wrote to Mr. Procter, authorising him to sign a contract on his behalf for the sale of "all his interest" for £3,000, and stating he would pay a commission of £105. The plaintiff again saw his client, who then offered £2,950. This price the defendant said he would accept, if the commission was reduced to £100. The plaintiff agreed to this, and the bargain was struck. When the purchaser's solicitor obtained the lease which his client was supposed to buy, he found it was a sub-lease. This he refused to accept, stating that he was purchasing the head-lease, and the sale fell through on that account. Mr. Chitty submitted that the sale had gone off through no fault of the plaintiff, who was, therefore, entitled to his commission.

Mr. George Piercy, the plaintiff, bore out counsel's statement.

Mr. Richard Procter, bank accountant, residing at Hampstead, said the defendant mentioned the head-lease, and said he would jump at £3,000 for it. It was not true to suggest that all he intended to sell was the sub-lease; he intended to sell everything, "lock, stock and barrel." The difference in value between the two leases was £350.

Mr. E. Le Voy, solicitor to the purchaser, said the defendant's solicitor wanted him to sign a contract before he got a copy of the lease. His client certainly thought he was buying the head-lease.

Mr. A. Chaplin, solicitor, said he had the defendant's instructions to sell, in writing as well as verbally, and on September 6 he enclosed particulars to Mr. Piercy. Witness had nothing to do with carrying out the sale, and had no authority to say whether the defendant was going to sell the head-lease or both leases. In reply to the Judge, witness said he assumed that the particu-

lars meant the head-lease, and the date was the date of the head-lease.

The Judge: That is what I say. Who is going to buy a tied lease?

The defendant, Mr. William Seaward, who said he was aged 83, stated that Mr. Chaplin formerly acted as his solicitor, but he had not seen him since April, 1898, having changed his solicitors. He did not give him authority to write the letter of September 6 to Mr. Piercy, and he never gave Mr. Procter authority to sell the head-lease of this property. He paid £350 for the head-lease. He did not have the deeds in his possession, and did not know what they contained.

Mr. Munroe wished to ask the defendant what he intended by the words "all his interest," but

His Lordship refused to allow the question to be put.

In the result, his Lordship gave judgment for the plaintiff, with costs.

Counsel for the plaintiff: Mr. Willes Chitty; counsel for the defendant: Mr. Courthope Munroe.

Debenham, Tewson and Co. v. Slazenger and Sons.

Lord Mayor's Court, July 31, 1899.—Before the Assistant Judge and a Jury.

Reported ESTATES GAZETTE, Vol. liv., p. 302.

Stamping instructions on retainer—Agreement or authority—Penalty.

This action was brought by Messrs. Debenham, Tewson, Farmer and Bridgewater, auctioneers and estate agents, of 80, Cheapside, against Messrs. Slazenger and Sons, to recover £30, commission upon the letting of a portion of the premises, 56, Cannon Street. The plaintiff's case was that in August, 1891, the defendants, who carried on business at 56, Cannon Street, called at their office, and said they wished to let part of their premises, and to retain possession of part. Full particulars were taken, and the defendants were notified that the plaintiff's commission would be 5 per cent. upon the first year's rental. A board was put up, and advertisements were inserted in certain papers. On March 30, 1897, Messrs. Eldred and Bignold called upon the plaintiffs, and asked for particulars and an order to view, which were supplied. They said they

354 COMPENDIUM OF COMMISSION CASES.

were acting on behalf of Mellin's Emulsion Company. That company, it was said, afterwards took an assignment of the premises at a rent of £600 a year for the first year. As the introduction came through the plaintiffs, they claimed their commission upon the transaction.

Mr. P. H. Mead, clerk in the service of the plaintiffs gave evidence in support of the claim, and while the witness was under examination the written instructions given by the defendants to the plaintiffs were put in. The document was found to be unstamped, and the Judge held that it could not be used unless a penalty of £11 Os. 6d. was paid.

Mr. Glyn said that Messrs. Debenham were not in the habit of having those documents stamped. It was not an agreement relating to the payment of commission, but merely an authority to the plaintiffs to register the property, and "let the same on the terms affixed or such other as we may hereafter direct." A note relating to the scale of commission appeared on the other side.

The Judge said he was of opinion that the document must be stamped, and the penalty was thereupon paid, the document afterwards being put in evidence.

Mr. A. E. L. Slazenger, a member of the defendant firm, was called, and said the original instructions given to the plaintiffs in 1891 came to an end in 1894, when the boards which had been put up were taken down by the plaintiffs. In 1896 his (witness's) firm were desirous of letting the upper portions of the premises occupied by them at £500 a year, and he (witness) went to the plaintiffs' office, and gave instructions for letting the premises upon a repairing lease. Ultimately his (defendant's) firm came into communication with the firm of Eldred and Bignold, but the names of the plaintiffs were never mentioned as the introducers, and a card to view bearing their names was not produced. Not until some time afterwards was it stated that the plaintiffs had introduced the firm. They had not taken part in any of the negotiations, and they were not entitled to the amount claimed. If they were entitled to the amount it was at the most 5 per cent. on the amount of £175.

The jury found a verdict for the plaintiffs for £12 10s., including an amount of £10 paid into Court by the defendants.

COMPENDIUM OF COMMISSION CASES. 355

Mr. Lewis Glyn was counsel for the plaintiffs, and Mr. Compton for the defendants.

Gliddon v. Rescul.

Stonehouse County Court, October 9, 1899.—Before his Honour Judge Edge.

Reported ESTATES GAZETTE, Vol. liv., p. 669.

Disputed introduction—Note of commission to sole agent.

Mr. Edwin James Gliddon, auctioneer and house agent, claimed £2 15s. from Miss C. E. Rescul, 64, Well Street, commission due on the sale of the business, 36, Regent Street.

The plaintiff stated that defendant wished to dispose of a greengrocery and confectionery business, and consulted him. He agreed to act for her as sole agent at 5 per cent commission, but if not as sole agent at 10 per cent. Defendant agreed to his being sole agent, and he advertised the sale of the business. Mr. Sara, Camborne, communicated with plaintiff with a view to purchase, and the price asked was £55. This was in July. On August 27 he received a letter from defendant stating she had sold her business, and on his making enquiries he found that the purchaser was Mr. Sara, Camborne. Plaintiff told defendant that this was not the proper way to do business, and he made his claim for £2 15s., which she declined to pay.

Cross-examined: Was never given to understand by defendant that Messrs. Bowen, house agents, Union Street, were acting for her from the early part of June. The commission agreed was 5 per cent. as sole agent; not 2½.

The defendant stated that in the early part of June she decided to sell the goodwill of her business, including fixtures. She first went to Messrs. Bowen, who advertised for five weeks, and then she saw plaintiff, who agreed to advertise and endeavour to sell the business, the commission agreed being 2½, not 5 per cent. She however signed an agreement that plaintiff should be paid 5 per cent. and act as sole agent, but at the time she did not know what the agreement contained, because she never read it through. Messrs. Bowen introduced Mr. Sara and disposed of the business, and she paid that firm 5 per cent. When Mr. Sara came

356 COMPENDIUM OF COMMISSION CASES.

to the premises he said he had been introduced by Messrs. Bowen, and did not mention plaintiff's firm.

Mr. Daniel White, in the employ of Messrs. Bowen and Co., said on June 8 defendant instructed his firm to sell the business. Mr. Sara communicated with his firm and saw the business. Eventually Mr. Sara agreed to purchase, and paid the money to Messrs. Bowen.

His Honour said this was a case of keen competition among house agents, such as frequently came before the Court. He did not think plaintiff had made out his case. On behalf of plaintiff an agreement had been produced, in which he was appointed sole agent with 5 per cent. commission, but defendant had fairly and candidly said that she did not read it through before she signed it. No doubt plaintiff honestly believed he was sole agent, but it was clear the purchaser was introduced by Messrs. Bowen. In the keen struggle among house agents Messrs. Bowen found a purchaser and not plaintiff. There would be a verdict for defendant, with costs.

Beal and Myrtle v. Carter.

Queen's Bench Division, March 1, 1900.—Before Mr. Justice Phillimore.

Reported *ESTATES GAZETTE*, Vol. lv. p. 355.

Halving commission—Custom.

The plaintiffs, Messrs. Beal and Myrtle, auctioneers and estate agents, 20, Regent Street, S.W., claimed one-half of the commission of £144 received by the defendant, Mr. E. J. Carter, auctioneer, of Tunbridge Wells, under agreement or custom.

The plaintiffs' counsel said the claim was for one-half share of the commission received by the defendant from Mr. Trumble in respect of the sale of Fairlight, Tunbridge Wells, to Mr. Frank Goddard, commission which the defendant in February, 1898, agreed to divide with the plaintiffs. There was a common practice amongst auctioneers, when they had a client and had not a property to suit him, to write to other auctioneers offering to share commission if they had anything which did suit their client. Mr. Carter found Mr. Trumble, who was ready to let his house to Mr. Goddard, Messrs. Beal and Myrtle's client, and what was understood to

be a contract was signed between them. Mr. Goddard brought an action for specific performance against Mr. Trumble. Thereupon Mr. Carter brought an action against Mr. Trumble for commission, and the latter paid him £144. Now the plaintiffs claimed that they were entitled to one-half of that sum. These shortly were the facts of the case. On February 25, 1898, the plaintiffs wrote to Mr. Carter stating that they were seeking an unfurnished house with 15 acres, in Sussex, for Mr. Goddard, and if the defendant had a property suiting their requirements they presumed he would divide commission with them, as usual. On February 27 Mr. Carter replied, sending particulars of Stonehouse Park, and stating that in the event of business ensuing he should be pleased to share the commission. Mr. Goddard did not accept that, but on September 26 entered into an agreement to buy Fairlight for £5,000. There was a dispute about it. Mr. Carter apparently signed a document by which he purported to purchase the property, but Mr. Trumble took the point that he had no authority to bind him, but only to negotiate, and that therefore there was no contract. The action was not fought out. The defendant informed the plaintiffs of the offer to buy for £5,600, with fixtures £150 in addition, and later on stated there was a lawsuit pending and asked the plaintiffs to pay a proportion of the costs. The plaintiffs replied that they had no objection, but they wished to see the documentary evidence before incurring any liability. On February 16 Mr. Billings, managing clerk to the defendant, had an interview with the plaintiffs, who, however, never received the correspondence or knew when the action was to be heard.

Mr. Beal, one of the plaintiffs, bore out the learned counsel's remarks.

The defendant's counsel, who admitted that a division meant one-half in this case, said the plaintiffs had to show that under the contract they were entitled to share the commission. Mr. Goddard was related to the plaintiffs. But Mr. Goddard did not take any house at all, and so far as plaintiffs were concerned Mr. Goddard was still their client. Counsel contended that the business was to be confined to Stonehouse Park and nothing besides. Even if it did not mean as much as that, it surely meant that only in the event of the defendant finding something which Mr. Goddard would

take, which had not been done, business would result. The alleged contract was only signed by Mr. Carter, and if Mr. Trumble was right, he (Mr. Carter) only acted as agent.

His Lordship gave judgment for the plaintiffs, with costs, after their counsel had agreed on their behalf to bear one-half the costs, £27, of the previous action. His Lordship considered the commission was to be shared in the event of the defendant making money in his professional capacity.

Mr. O. F. Giddy (Messrs. Giddy and Giddy, estate agents, 121, Pall Mall) and Mr. Brown (of Messrs. White, Druce and Brown, estate agents, 9, Brook Street, W.) were retained on behalf of plaintiffs to give evidence of custom, but were not called.

Counsel for the plaintiffs: Mr. Corrie Grant; counsel for the defendant: Mr. Dickens, Q.C., and Mr. Hohler.

Aldridge and Co. v. Kynaston.

Queen's Bench Division, March 5 and May 10, 1900.—Before Mr. Justice Phillimore and a Jury; and before the Court of Appeal.

Reported *ESTATES GAZETTE*, vol. iv., pp. 396 and 808.

Unsuccessful auction—Alleged custom for auctioneer to retain property after auction.

This was an action brought by Messrs. Aldridge, Douglas and Co., auctioneers and estate agents, of 37, Walbrook, E.C., against Mr. George E. Kynaston, to recover £42 10s., alleged to be due as agreed commission for procuring the sale of a house.

The defendant was the owner of a house and land, known as Woodlands, situated at Winchmore Hill. In April last he placed the property in the hands of the plaintiffs for sale by auction. On April 12 the plaintiffs wrote as follows:—"Re Woodlands. Adverting to our interview of yesterday's date, as promised we write to state that we shall be happy to submit the above property to auction on the following terms:—In the event of the property being sold our commission is as per enclosed scale. To include the charges. In the event of the property not being sold, we will charge you the exact amount of out-of-pocket expenses only, that is to say, we will make no charge for our time or services rendered, and shall be happy to produce vouchers for the amount expended in advertising, printing, posting,

postages, etc." The scale provided for the payment of commission at the rate of 5 per cent. for the first £100 of the sale price, and at the rate of 2½ per cent. upon the remainder, up to £5,000. The sale was fixed to take place on May 24, and a reserve of £1,800 was put upon the property. Advertisements announcing the sale were at once inserted by the plaintiffs in several newspapers, and bills were printed and posted at several advertisement stations, including places just outside Finsbury Park and Holloway railway stations. On May 24 the property was put up to auction, but, the reserve price not being reached, it was withdrawn. On June 5, according to the plaintiffs' case, an interview took place between Mr. Aldridge, a member of the plaintiffs' firm, and the defendant, in the course of which the latter agreed to leave the property in the plaintiffs' hands for sale for two months, and the reserve was reduced to £1,500. Fresh advertisements were accordingly published by the plaintiffs. On June 16 the property was sold to Mr. Thomas Emerton for £1,600. The plaintiffs thereupon sent in their account to the defendant, which included £19 4s. for out-of-pocket expenses, and the sum now claimed for commission. The defendant paid the £19 4s., but he declined to pay the sum claimed by the plaintiffs for commission, on the ground that the sale to Mr. Emerton was not effected through their instrumentality.

Mr. Thomas Emerton, called on behalf of the plaintiffs, stated that his wife heard of the property from Mr. Thomas Gibson.

Mr. Thomas Gibson stated that he informed Mrs. Emerton that the property was for sale, having seen posters announcing that it was for sale by auction at either Finsbury Park or Holloway railway stations.

On behalf of the defendant it was submitted that there was no case to go to the jury, on the ground that there was nothing to connect the plaintiffs with the sale to Mr. Emerton.

Mr. Justice Phillimore gave judgment for the defendant on the ground that the action was framed on the agreement contained in the letter of April 12, and that there was no evidence to go to the jury of a sale to which that agreement applied. He refused to amend the pleadings.

Mr. Edward Stimson (Messrs. Stimson and Sons, 2, New Kent Road, and Moorgate Street, E.C.), and Mr.

360 COMPENDIUM OF COMMISSION CASES.

Nott (Messrs. Nott and Cartwright, Balham), were retained to give evidence as to custom, but were not called.

On appeal to Lords Justices A. L. Smith, Vaughan Williams, and Romer, the above facts were stated, and the plaintiffs' counsel urged that the custom was well known that a property was left in the hands of an auctioneer for some time after an attempted sale by auction.

Lord Justice Romer: If I make a special contract with an auctioneer to sell my property by auction, am I bound to employ him if I want to sell by private treaty? Is that the custom? If the auction bill was the sole thing, I cannot see how you can claim.

Counsel also contended that the result of the interview of June 5 was a question for the jury. There was evidence of an agreement to pay commission for any introduction brought about by the past or future efforts of the plaintiffs. They cited "*Kynaston v. Nicholson*," "*Bayley v. Chadwick*," and a case "on all fours," "*Everill v. Walker*."

Counsel for the defendant were not called upon.

Lord Justice A. L. Smith, in giving judgment, said that the contract of April 12 and all that was done under it was at an end when the attempted sale by auction on May 24 fell through. With regard to that contract, the plaintiffs were entitled to nothing, having been paid their out-of-pocket expenses. On June 5 a new contract had been entered into, by which the house was to be left in the plaintiffs' hands for two months, so that they might effect a sale if they could. That left it open to the defendant to sell by private treaty if he could. He succeeded in doing so, the purchaser having heard of the property through someone who had seen the advertisements posted by the plaintiffs under the contract of April 12. But for all the plaintiffs had done under that contract they had been paid. The sale was not effected by anything done by the plaintiffs under the new contract. The direction of Mr. Justice Phillimore was therefore right, and the appeal must be dismissed.

Lords Justices Vaughan Williams and Romer concurred.

Counsel for the plaintiffs: Mr. Danckwerts, Q.C., and Mr. H. Kisch; counsel for the defendant: Mr. Kemp, Q.C., and Mr. Woodfin.

Williams v. Tuckett.

Queen's Bench Division, March 8, 1900.—Before Mr. Justice Lawrence and a Special Jury.

Reported *ESTATES GAZETTE*, vol. IV., p. 441.

Auctioneer retained—Sale through another channel—Right to commission—Custom.

This was an action by Mr. H. Cuthbert Williams, 2, Union Court, Old Broad Street, E.C., auctioneer, to recover commission. The case raised an interesting question as to an alleged custom to pay commission where the property had been withdrawn from the hands of the auctioneer and sold through another channel. The defendant was the owner of a freehold ground rent on 181, Queen Victoria Street, London. In May, 1899, the defendant, through her husband, agreed with the plaintiff that he should advertise the property for sale by public auction; that the reserve price should be £3,900; that the plaintiff should receive £5 if the property was not sold; and that he should receive the surplus over £3,900 if the property realised more than that figure. The plaintiff had posters printed advertising the property for sale, and conditions of sale were printed. Before the date of the auction the defendant's husband had an offer of purchase from the lessees of the building for £3,997, which he accepted, and withdrew the sale by auction. The defendant paid the plaintiff £5 to cover his out-of-pocket expenses. It was not known that the advertisements of the plaintiff brought about the purchase by the lessees, but three auctioneers of standing, Mr. W. Roland Peck (Messrs. Hampton and Sons, 1, Cockspur Street, S.W.), the President of the Auctioneers' Institute, Mr. James F. Field, F.S.I. (Messrs. Field and Sons, 54, Borough High Street, S.E.), and Mr. W. H. Daw, F.S.I. (Messrs. Herring, Son, and Daw, 6, Ironmonger Lane, E.C.), were called to prove that it was a well-known custom among auctioneers that an auctioneer is entitled to a commission of 2½ per cent. in cases where a property has been put into his hands to sell, and, before he has had an opportunity of offering the property for sale, it is withdrawn from his hands and sold through another channel. It was also contended that the custom had been proved, and so found by the jury in the case of "*Rainey v. Vernon*" (9 C. and P., 559).

For the defendant it was contended that there was no such custom, and Mr. Howard Martin, F.S.I.

(Messrs. Thurgood and Martin, 27, Chancery-lane, W.C.), an auctioneer of 35 years' standing, was called, and said there was no such custom to pay commission, unless the auctioneer could show that the sale was brought about by something that he had done.

Mr. Justice Lawrence, in summing up to the jury, said the property was of a peculiar character, and difficult to sell by auction. The plaintiff asked to have the chance of selling it. It was agreed that if the property was not sold he was to get £5, and anything above £3,900 if the property fetched more than that sum. With regard to the alleged custom, it must be notorious to the whole world, and not to auctioneers only, and it must be reasonable. Three auctioneers stated that there was such a custom; on the other hand, it was unknown to another auctioneer of equal standing, but the latter said that if what the auctioneer had done had the effect of bringing about the relation of vendor and purchaser, then he was entitled to commission. That seemed to be consistent with common law and common sense, which sometimes went together. Had the plaintiff made out that the custom existed, and, if not, what was he entitled to?

The jury found a verdict for the defendant.

The learned Judge: That is that no such custom exists, and the £5 paid him is sufficient.

The Jury: Yes.

Counsel for the plaintiff: Mr. J. A. Hamilton; counsel for the defendant: Mr. Duke, Q.C., and Mr. Hodge.

Gudgeon and Sons v. Cowper-Smith.

Winchester County Court, March 17, 1900.—Before His Honour Judge Gye.

Reported *ESTATES GAZETTE*, vol. iv., pp. 518 and 906.

First introduction—Alleged withdrawal of authority.

Messrs. Gudgeon and Sons, auctioneers and land and house agents, of Winchester, sued Mrs. Cowper-Smith, of Kensington, to recover commission.

Mrs. Cowper-Smith was formerly owner of a house known as Oak Bank, Bishopstoke, and the claim was to recover commission of $2\frac{1}{2}$ per cent. on the sum of £1,000 for which the house was sold. The alternative claim was for £25 for services rendered. Mr. G. E. Gudgeon had been acquainted with the Cowper-Smith

family for years, and on October 4, 1898, the firm received from Mr. Cowper-Smith, defendant's son, a letter requesting them to endeavour to sell the house as soon as possible, "no reasonable offer being refused." Mr. Gudgeon accepted the instructions, and submitted the property to various people whom he thought likely to purchase it. He received a verbal and definite offer for £1,500, to include certain fixtures, but that offer was refused, £1,600 being asked for. In the early part of March, 1899, Mr. Henry White made a definite offer of £1,300, but that was also refused. In the following May defendant wrote to the plaintiffs saying that she intended arranging with a firm of auctioneers to sell the property by auction in London. Nothing was said in the letter that Mr. Gudgeon was to cease from trying to sell by private treaty, and Mr. Gudgeon wrote back expressing surprise that the sale by auction was given to another firm after the trouble he had taken. The sale by auction took place on July 21, 1899, and Mr. Henry White bought the property for £1,000. Put shortly, the plaintiff's case was that he was the means of introducing the property to the notice of the gentleman who subsequently bought it, that the house was bought through the introduction by Mr. Gudgeon, and that therefore he was entitled to the commission on the sale.

Mr. Gudgeon, as showing the trouble taken with regard to the house, said they had given 45 orders to view the property and had written upwards of 125 letters with regard to it. He contended that under the circumstances he was entitled to the commission, notwithstanding that the actual sale took place through the hands of another firm.

Mr. Henry White said he saw it publicly announced that Messrs. Giddy and Giddy were to sell the property by auction on a certain date, and he went to London, made one bid for it, and became the purchaser. It was the same property he had previously offered £1,300 for. In his opinion it was advertised very extensively, and he went to the sale because of the advertisement; but he knew the property through Mr. Gudgeon, who had previously tried to induce him to buy it, and who had given him an order to view it.

Mr. H. F. Savage, principal clerk to the plaintiffs, gave details of the actual work done by the firm in respect of the property.

Mr. Cowper-Smith stated that he placed the property in the hands of Messrs. Giddy and Giddy at the same time as he instructed the plaintiffs, but in reply to his Honour he said the reserve price of £1,000 was fixed shortly before the sale by auction, and that if he had received an offer of £1,300 from Messrs. Gudgeon between that time and the sale he should have accepted it.

The defendant's counsel contended that the letter informing the plaintiffs the property was to be sold by auction was *ipso facto* a revocation of the order to sell by private treaty, that the sale took place as a consequence of Messrs. Giddy and Giddy's advertisement, and that they were the persons entitled to the commission.

His Honour: Mr. White knew all about the property before that; all he learned from the advertisement was that the sale was going to take place.

Ultimately his Honour found that defendant's authority to the plaintiffs was never at any time withdrawn, and existed up to the time of the sale by auction; and that by their introduction of the property to Mr. White they were the approximate and immediate cause of the sale of it to him. He should give judgment for the amount claimed with costs on the higher scale.

An appeal was subsequently (May 24) heard in the Divisional Court, when the defendant's counsel submitted that the letter of May 28 was a revocation of authority to the plaintiffs. Messrs. Giddy advertised the property, and Mr. White said he saw their advertisements. Counsel quoted the case of "Taplow v. Barrett," which he said was precisely similar to this case.

Mr. Justice Ridley: You could not withdraw your instructions so far as the plaintiffs had already earned their commission.

Mr. Justice Bigham: They had introduced it to the person who bought it, and that person would never have purchased but for their introduction.

Counsel said Mr. White's offer to the plaintiffs was definitely refused, and the mere fact that a probable purchaser turned up at a subsequent auction eight months later had nothing to do with it.

Mr. Justice Bigham: I think it has a great deal to do with it. You have the purchaser and you have got him by the plaintiffs' work.

Counsel submitted that the plaintiffs were only en-

titled to commission when there was a direct introduction and not a remote one. Mr. White was induced to go to the sale by the advertisements.

Mr. Justice Bigham: We are not to consider if this judgment is against the weight of evidence.

Mr. Justice Ridley: If you could have induced the Judge to believe that the plaintiff did not introduce the purchaser you would have achieved a triumph.

Mr. Justice Bigham: The contract is as plain as a pike-staff.

In his judgment, Mr. Justice Ridley said the defendant had made himself liable, both to the auctioneers and the plaintiffs, the first agents. The introduction was a question of fact which the County Court Judge had decided against the defendant.

Mr. Justice Bigham said this was a hard case on the defendant, but he had only himself to blame. The plaintiffs undoubtedly introduced the purchaser, and were entitled to their commission.

Judgment was thereupon given for the plaintiffs with costs, the County Court Judge's view being confirmed.

Counsel for the plaintiffs: Mr. Clavell Salter; counsel for the defendant: Mr. G. H. B. Kenrick.

Martin, Clarke and Co. v. Barnard.

Queen's Bench Division, May 8, 1900.—Before Mr. Justice Lawrence and a Jury.

Reported *ESTATES GAZETTE*, vol. lv., p. 790.

Sale by second agent after auction.

The plaintiffs, auctioneers and estate agents, of 9, Bedford Court Mansions, Bedford Square, W.C., claimed £71 13s. 5d. as expenses and commission earned upon the sale of Badger Hall, Thundersley, near Rayleigh, Essex.

Counsel for the plaintiffs said that they were well-known auctioneers and estate agents, and the action had become a serious matter to them owing to the conduct of the defendant in placing on record a charge of fraud against the agents, who had used every courtesy and kindness towards him and met him fairly and in a friendly way. Appearing as he did for auctioneers of some standing, the jury would see whether there was any foundation for such a charge. In 1898 the plaintiffs were advertising for some property near Hitchin which they wanted for a client, and on July 27 defendant

replied describing his own property in glowing terms and asking the plaintiffs to go down and see it. The plaintiffs replied that they had another client who might purchase if they were paid the usual commission for the introduction, and on August 2 the defendant replied asking to be informed of the commission, and on August 3 the plaintiffs enclosed their terms, which was the scale of charges usually made by leading estate agents. There followed correspondence right on to the next June. On January 5, 1899, the defendant placed the property in the hands of the plaintiffs for sale, and they agreed to put it up to auction for about £20, including three guineas for their trouble, which was to be merged into their commission if a sale took place. On June 8 several applications were being made in regard to the property, and £2,700 was mentioned as the lowest price. Mr. Copesworth, who lived near the property, and about whom the defendant wrote that he had seen their auction bills at the entrance to the drive, went over the estate on June 10, with two solicitors, Messrs. Wintle and Watkins, of Southend, and a question of mortgage was discussed. Another firm of auctioneers, Messrs. Deeley and Kesterton, of Southend, also went down to Essex with Mr. Copesworth, but nothing came of these negotiations. The defendant, in reference to the offer by Mr. Copesworth, wrote asking what the fees would be, and the plaintiffs again sent particulars of the ordinary scale of charges which estate agents made for selling property, and the defendant replied that he could not do better than leave the matter in their hands. The plaintiffs did not sell the property at the auction on June 16, when Mr. Copesworth, Mr. Wintle, and Mr. Deeley were present. Subsequent letters passed about Mr. Copesworth's offer. Then, on July 20, the defendant wrote stating that he had an inkling of a purchaser, although he should have liked the plaintiffs to have concluded the matter and received the commission. On July 21 the plaintiffs stated that they had introduced the property to a great number of people, and that as only a month had passed it was rather early to conclude that their advertising had been thrown away, whilst the usual plan was to leave the matter in the hands of the auctioneers for three months. On July 26 defendant said that without his seeking he had found a purchaser at £2,600, and it appeared that some local agent was in

the field. Mr. Clarke (plaintiff) then had a friendly interview with the defendant, and agreed with him in a document, properly drawn up (dated August 1) and stamped, that in consideration of the plaintiff being paid his out-of-pocket expenses incurred at the auction, he would reduce his commission to one-half (£34 5s.), provided he was given the disposal of two leasehold properties in London which the defendant wanted to sell. On August 24 the plaintiffs sent in their account, and the defendant's solicitors, in reply, offered £50 in settlement of the claim. This sum the plaintiffs refused, and an action was commenced, the case being heard as a short cause, when the defendant's counsel charged fraud, and the cause was transferred to a judge and jury. Then, for the first time, the pleadings disclosed the fact that the agents who introduced the actual purchaser were Messrs. Deeley and Kesterton.

Mr. John J. Clarke, a member of the plaintiff firm, bore out counsel's opening statements. At the interview of August 1 witness said that as the purchase had been settled, Mr. Barnard would naturally like him to carry through the negotiations and conclude the arrangements, as by the letters which he had written he had left the matter in his hands and was liable to witness for the commission and had a right to his services. Mr. Barnard told him, "When these agents approached me in the matter I referred them to you; saying it was entirely in the hands of Messrs. Martin, Clarke and Co., who have negotiated all through." The agents replied, "If we have to negotiate through other auctioneers the business cannot be done, because we want the commission ourselves." Witness said, "I suppose they induced you to give them a commission note." He replied, "Yes, they did." Witness said, "Then I am afraid you have made yourself liable for two commissions." He replied, "I didn't expect to pay you all the commission, but I did expect to pay something for all the trouble you have taken." Witness asked who were the purchasers and agents. Mr. Barnard said he would rather not tell him just then. In further conversation the defendant agreed to pay him half the usual commission and allow him to sell Nos. 66, Albany-street, Regent's Park, and 14, Erleigh Road, Kensington, and witness wrote out an agreement embodying these statements, which defendant signed. Friendly relations continued between himself and the defendant

368 COMPENDIUM OF COMMISSION CASES.

for some time afterwards. There was no word of truth in the suggestion that he induced Mr. Barnard to sign the agreement of August 1 by fraud or misrepresentation.

Cross-examined: He told Mr. Barnard that the effect of his letters was that he had left the matter entirely in their hands, but he could not point out any words "sole or exclusive agency" in any document. He did not consider he possessed any influence over the defendant. He had been allowed 10 per cent. discount on advertisements because he paid money down to the newspapers and ran a monthly account, whereas he might not get the money for a long time from his clients.

Mr. W. Roland Peck, President of the Auctioneers' Institute (of Messrs. Hampton and Sons, Cockspur Street, S.W.), being asked what was the custom with regard to property put in the hands of an auctioneer for sale by auction, said it depended on the size of the property and how long it ought to remain in the auctioneer's hands. If it was a large landed estate they expected to have the opportunity of disposing of it for six months after the auction; in the case of an investment in the Strand, six weeks; or for an ordinary country house, two or three months. It was hardly reasonable to take Badger Hall out of the auctioneer's hands within a month of the sale. He considered £37 out-of-pocket expenses for such a sale as very moderate. A greater part of the properties offered at the Mart were usually sold afterwards by private treaty in consequence of the publicity of the sale. The 10 per cent. for advertisements was a cash discount quite apart from the cost. Under the special circumstances of another agent introducing a purchaser and not being aware of the auction, he ought to be referred to the auctioneer, and the commission would be divided between the two.

Cross-examined: Suppose the second agent refused?

Mr. Peck: He would not be worth treating with.

But if he refused?

Mr. Peck: So very few auctioneers would act in that way that there is no custom existing about it.

His Lordship: The same thing happens with auctioneers' boards, does it not? You share the commission?

Mr. Peck: Yes.

COMPENDIUM OF COMMISSION CASES. 369

Cross-examined: Must the vendor refuse the offer of a second agent in the case of his objection?

Mr. Peck: If the second auctioneer refuses to treat, I should doubt whether he had a client at all.

His Lordship: He says if it is done, it is not done by any auctioneer of standing.

In addressing the jury on behalf of the defendant, their counsel said he hoped to prove by facts that the defendant ought not to be bound by the letter he signed. The out-of-pocket expenses had crept up to £37 8s., whereas the limit was to be £20. Allowing for the discount and giving the plaintiff three guineas for their trouble they were only out of pocket £33. The agreement of August 1 was signed by a mistake brought about by misrepresentation of the agent that the defendant had placed the sole and exclusive agency in his hands. It was admitted by the plaintiff, and could not be denied, that he made these representations, namely, "you have made yourself liable for commission and you placed the sole and exclusive agency in our hands." It was most important to consider whether the representations were true to draw the distinction between a sole and exclusive agency and an ordinary agency. Mr. Gover contended that the plaintiff knew perfectly well that the defendant was a man who could be influenced, and he went down on August 1 for that purpose, although defendant's solicitors had requested all further correspondence to be addressed to them.

Mrs. Barnard, wife of the defendant, said that Mr. Clarke told her husband that he was a free agent in the matter of the sale. At another interview Mr. Clarke came down rather inclined to be very angry, and said he could claim his commission by law; her husband and she were both under that impression. On his representations that her husband had bound himself to pay full commission and asking for further business, they believed he would accept half of his commission, which he told them distinctly he was entitled to by law.

The defendant, who was very deaf, said Mr. Clarke told him he came down to see him rather than write an angry letter, ruffling his feelings, and said plainly he was liable to pay him the full commission. Witness demurred at first, but Mr. Clarke assured him that on the face of his (defendant's) own letters he should win. Mr. Clarke also stated that if he would give him an undertaking to let him have the sale of other property

370 COMPENDIUM OF COMMISSION CASES.

he would take half commission. He believed that what he said was correct and legal, and yielded, signing the undertaking. It was not true that he placed the sale exclusively and solely in defendant's hands. The extra expenses over £20 was an eye-opener for him, and when he found that the defendant could make a mistake over that, he thought also that Mr. Clarke had no legal right to any other compensation.

In cross-examination Mr. Barnard said the solicitor to the purchaser was Mr. Wintle, and the agents Messrs. Deeley and Kesterton, whom he saw at his house with Mr. Copesworth before the sale. The sale was talked about in the neighbourhood before the bills were put up by the plaintiffs.

The defendant's counsel during his speech produced a copy of the *ESTATES GAZETTE*, and read his Lordship's judgment in the case of "*Williams v. Tuckett*" reported therein.

The plaintiffs' counsel, in reply, said Messrs. Wintle, Deeley and Copesworth went over the property before the auction sale, when the notice board with the plaintiffs' name on it was outside the doors, and they were present at the sale. They knew of the property through Messrs. Martin, Clarke and Co. Messrs. Deeley and Kesterton were introduced through the instrumentality of the plaintiffs, and it was now clear the plaintiffs were entitled to the full commission. On August 1 they did not know their rights, and entered into a bona fide compromise of their just and honest claim, which they were bound by.

The jury found in favour of the plaintiffs, and judgment was given accordingly for the amount claimed, with costs.

Counsel for the plaintiffs: Mr. Blake Odgers, Q.C., and Mr. C. Herbert Smith; counsel for the defendant: Mr. Frank Gover.

Adam Brothers v. The British Linen Company Bank and Kingsmill.

Queen's Bench Division, July 4, 1900.—Before Mr. Justice Bigham and a special Jury.

Reported *ESTATES GAZETTE*, vol. lvi, p. 29.

A disputed liability—A question of retainer.

In this case the plaintiffs claimed from the defendant bank £3,500 for commission upon the introduction of

the defendant bank by the plaintiffs to the vendors of Southsea House, Threadneedle Street, which introduction was said by the plaintiffs to have resulted in the purchase of Southsea House by the defendant bank for £350,000. The plaintiffs claimed alternatively against the defendant Kingsmill damages for breach of warranty that he had authority on behalf of the defendant bank to promise to pay the plaintiffs commission on the introduction.

The plaintiffs were shipowners and ship-brokers carrying on business in London and Aberdeen. One of the partners, Mr. Alexander Chivas Adam, was also a member of the Baltic association, which occupied Southsea House under a lease from the owners, the Baltic Company, Limited. At the end of 1898, or the beginning of 1899, questions arose between the members of the Baltic and the company as to an increase in the rent to be paid for Southsea House, and eventually the members decided to leave that house and to carry on their business at other premises. Thereupon the Baltic Company became desirous of selling Southsea House. The plaintiffs' case was that in March, 1899, the defendant bank were looking out for new business premises, and that on March 3 Mr. Adam introduced Southsea House to the defendant Kingsmill, who was the bank's London manager, as suitable premises which were or would shortly be in the market, and that Mr. Kingsmill told him to try to get an offer. Mr. Adam saw Mr. Majolier, one of the directors of the Baltic Company, and informed him that he had friends who might become purchasers. Mr. Majolier told him that the price was £350,000, which he communicated to Mr. Kingsmill on June 19. Mr. Adam asked Mr. Majolier what he (Mr. Adam) was going to get out of the matter. Mr. Majolier told him that the Baltic Company were not going to pay him any commission. Thereupon, on the same day, according to Mr. Adam's evidence, he saw Mr. Kingsmill, who said that if the vendors would not pay Mr. Adam a commission the bank would do so if the matter went through. On the same day Mr. Adam wrote to Mr. Majolier informing him that the bank had agreed to pay him commission. On July 18 Mr. Adam told Mr. Kingsmill that his rate of commission was 1 per cent., which the latter said was much too high. Eventually the bank entered into a contract for the purchase of

372 COMPENDIUM OF COMMISSION CASES.

Southsea House for £350,000, and the plaintiffs' claim for commission at 1 per cent. was put forward. This was repudiated by the bank, and the present action was then commenced.

In support of the defendants' case Mr. Kingsmill gave evidence. He denied that he ever promised that the bank would pay a commission to Mr. Adam. The position taken up with regard to Mr. Adam was that the latter must look out for himself and get his commission from the vendors. Mr. Kingsmill had been told, however, by one of the Baltic directors that all claims for commission would have to be paid by the buyers; and on June 19, when Mr. Adam told him that the vendors would not pay a commission, he replied that at the proper time he would try and get Mr. Adam something from his board, but there was no promise or agreement.

His Lordship, having summed up, left the following question to the jury:—"Did the defendant bank employ the plaintiff to negotiate on the terms that he should be remunerated by the bank?"

The jury, after an absence of three-quarters of an hour, answered in the negative, and his Lordship on this finding entered judgment for the defendants.

The foreman of the jury then informed his Lordship that some members of the jury thought that the bank ought to give something to the plaintiff, to which his Lordship replied, "So do I."

Counsel for the plaintiffs: Mr. Robson, Q.C. and Mr. A. J. Ashton; counsel for the defendants: Mr. Joseph Walton, Q.C., Mr. T. E. Scrutton, and Mr. Macgillivray.

Newson and Co. v. Tillett and Yeoman.

Lord Mayor's Court, July 18, 1900.—Before Mr. Bosanquet, Q.C., Common Serjeant, and a special Jury.

Reported *ESTATES GAZETTE*, vol. lvi., p. 126.

Two claims to commission—Payment into Court—Interpleader action.

The parties here were two City firms of auctioneers and estate agents, Messrs. Newson and Co., of Finsbury House, Finsbury Square, and Messrs. Tillett and Yeoman, 32, Finsbury Pavement, Aldersgate, and Bishopsgate Street, and Mr. Percy Chalmers. The proceedings arose from the sale of the lease of the warehouse premises, Nos. 83 and 85, Paul Street, Fins-

bury, the owner of which (Mr. Chalmers) was sued by the last-mentioned firm for £48 15s., commission alleged to be due on the sale thereof. Messrs. Newson and Co. having also submitted a claim, both firms agreed to the action being tried as an interpleader, Mr. Chalmers paying the money into Court.

It appeared that in February last Mr. Chalmers wrote instructing Messrs. Tillett and Yeoman to find a purchaser for the lease of the warehouse property, Nos. 83 and 85, Paul Street, Finsbury, the premium required being £1,000. Mr. F. C. Hine, who eventually became the buyer of the property, called at the offices of Messrs. Tillett and Yeoman and obtained from their managing clerk an order to view, together with full particulars. Mr. Hine also called upon Messrs. Newson for the purpose of obtaining particulars of other premises in the same neighbourhood, and among others those belonging to Mr. Chalmers were mentioned and an offer to view offered. Subsequent negotiations led to the introduction of Mr. Hine to the owner, and in the result the lease was acquired by him for £575. The Court had to decide which of the two firms of agents were entitled to commission.

Evidence having been given by Mr. Richard Thos. Brampton, managing clerk to Messrs. Newson and Co., and Mr. Barnard A. Denny, managing clerk to Messrs. Tillett and Yeoman,

Defendants' counsel submitted that Messrs. Tillett and Yeoman, being the first to introduce the property to the notice of the purchaser, were entitled to the commission, even though the actual sale was not effected by them, and quoted in support of his argument the case of "*Steere v. Smith*." The late Mr. Justice Field, who decided the case, had stated that this was a very useful case, and he would continue to act upon it. The learned counsel also mentioned the case of "*Burton v. Howes*," in which it was decided that where the agent, with the consent of the vendor, introduces a purchaser, he is entitled to commission even if the sale is brought about without his intervention.

Plaintiffs' counsel, in reply, submitted that no authority between a commission agent and his principal could govern the case before the Court, inasmuch as the agents had agreed to submit themselves to the process of interpleader. The question here was which

of the two firms had a better right to commission? The case of "*Steere v. Smith*" did not apply, inasmuch as it did not arise on an interpleader. "*Burton v. Howes*" was only a finding of fact, though it went to the very utmost verge of the law. It could only be employed if this was an action brought by the plaintiffs against Mr. Chalmers; it was certainly not binding on a question arising between two agents. The one and only case arising on interpleader was that decided by Lord Justice Lopes, sitting as a Judge in the Queen's Bench Division—"Barnet v. Brown"—in which it was found that the second introduction was the effective one.

The Common Serjeant: The question here is whether the defendants can show that the plaintiffs (Newson and Co.) have not a good claim to commission against Chalmers. I shall instruct the jury to find in the first place whether Messrs. Tillett and Yeoman were the first to introduce the property, and if so, whether or not the ultimate purchase was brought about quite independently of Messrs. Tillett and Yeoman.

Defendants' counsel, addressing the jury, said there was no doubt that Messrs. Tillett and Yeoman were instructed by Mr. Chalmers to find a purchaser for the lease of the premises, and that they gave an order to view, together with full particulars, to Mr. Hine. It was also admitted that Mr. Hine used the order to view furnished by Messrs. Tillett and Yeoman. The £1,000 premium was only mentioned as the basis of negotiation. Messrs. Tillett and Yeoman advised Mr. Chalmers that he would not succeed in getting such a high premium, and eventually Mr. Hine entered into a bargain with the owner. Mr. Chalmers admitted that it was Messrs. Tillett and Yeoman, and not Messrs. Newson and Co., who were entitled to commission.

Plaintiffs' counsel said the defendants (Messrs. Tillett and Yeoman) claimed to be the first to introduce the purchaser. This fact was admitted, but he wished to impress on the minds of the jury that both agents were engaged at the same time. Mr. Hine called on the defendants on February 6, and obtained from them an order to view. Mr. Hine went straight across to the plaintiffs' offices. By a stroke of good luck Mr. Hine called upon Messrs. Tillett and Yeoman first. Negotiations were entered into between the plaintiffs and Mr. Hine, but the defendants did not communicate with

Mr. Hine until six or seven days later, when they wrote and asked if he was willing to negotiate. The answer was to the effect that though the premises were quite suitable, the outgoings, including rates and taxes, would amount to about £550, whereas Mr. Hine was only prepared to pay £400. It was a significant fact that, knowing the premium asked was too high, Messrs. Tillett and Yeoman never went to the trouble to ask Mr. Chalmers to lower it or to get Mr. Hine to increase his offer, and so bring about a settlement. In fact, they did nothing from February 14, and the whole matter was treated as being off from that date. It was not until April that a sale was effected, at the instance of the plaintiff firm. It was absurd to suppose that a house agent was entitled to a commission of £48 15s. after simply issuing an order to view and taking no further trouble in the matter. An agent was expected to do something more than simply introduce a purchaser, and if he chose to let his fish go with the tackle, and someone else hooked him, it was perfectly monstrous to expect the commission to be handed over to him.

The Common Serjeant, having explained to the jury the system and charges adopted by house agents in the exercise of their profession, remarked that it sometimes happened that a house agent was able to dispose of a very valuable property, and thereby earn a substantial commission, with very little trouble, if any at all, but there were times when a very considerable amount of work had to be done, and there was little or no pay. Therefore, it was not for the jury to consider whether the plaintiffs or the defendants did little or much in bringing about the purchase in this case. According to his view, there were two questions to be decided in this particular case, which really ought never to have been brought there at all. Did the defendants first introduce the ultimate purchaser? That, of course, was a question of fact, and there was very little doubt about it. But it did not always follow that the person who introduced a purchaser was the one who effected the sale. In this case it was stated that the plaintiffs went to an appreciable amount of trouble to sell this property, and that they were the main instrument in persuading Mr. Hine to buy. That being so, it seemed hard that they could not get their commission, but if the only employment was on the terms upon which

376 COMPENDIUM OF COMMISSION CASES.

house agents were usually employed, then they did not seem to be entitled to it. The learned Judge reviewed the evidence at some length, and concluded by asking the jury to answer two questions: Did the defendants first introduce the purchaser? Was the purchase brought about quite independently of the first introduction?

The jury answered both questions in the affirmative, whereupon

Defendants' counsel submitted that he was entitled to a verdict on the issue. His clients had been instructed to sell, and they introduced a purchaser. There was absolutely no evidence to prove that the purchase was brought about entirely independently of Messrs. Tillett and Yeoman.

The Common Serjeant remarked that what might have weighed with the jury was that the defendants had no communication with the purchaser after February 14.

Ultimately leave was given to move before his Lordship to have judgment entered for the defendants.

Accordingly, at a later day, it was asked that judgment should be entered for the defendants, or a new trial be granted, as the verdict of the jury was against the weight of evidence. Counsel urged that his clients had proved employment and introduction of a purchaser, and Mr. Chalmers himself had said they were entitled to the money.

Plaintiffs' counsel submitted that his clients had made the effective introduction, that the verdict was a reasonable one, and that there was no ground for a new trial.

The Common Serjeant said there must be a new trial in this case. He could not get rid of the interpleader issue. He should say nothing about costs, but he certainly thought the agents should divide the money.

After some consultation, it was announced that both parties had agreed to settle the case by dividing the amount as suggested by the Common Serjeant.

Counsel for the plaintiff: Mr. J. B. Matthews;
counsel for the defendants: Mr. L. E. Glyn.

APPENDIX.

Green v. Bartlett.

(14 C.B.N.S., 681.)

May 30, 1863.

Where a sale is brought about by what the agent does, he is entitled to commission.

This action was tried at the sittings at the Guildhall after Hilary Term on February 13, 1863, and resulted in a verdict for the plaintiff for £39 10s., with leave reserved to enter a verdict for the defendant if the Court should be of opinion that plaintiff was not entitled to recover a larger amount than £25, which the defendant paid into Court.

It was an action brought by the plaintiff, who was an auctioneer, to recover from the defendant the sum of £62 10s., as and for commission upon the sale of the island of Herm, in the English Channel, which defendant authorised the plaintiff to offer for sale by auction. A written agreement was entered into by the parties, the material part of which was as follows:—
“And in consideration of, etc., he, the said T. J. N. Bartlett (defendant), doth hereby instruct the said S. J. Green to proceed forthwith to a sale by public auction, or otherwise, of the whole of the island of Herm, with all erections thereon; and if the same shall be sold the said T. J. N. Bartlett shall pay to the said S. J. Green 2½ per cent. commission on the amount of such sale, such commission to cover all expenses of every description. In case the said estate shall not be sold, the said T. J. N. Bartlett shall pay to the said S. J. Green £25 as a compensation for his trouble and expense; and in case the said S. J. Green shall go over the said island and give a valuation of the same, the said T. J. N. Bartlett shall pay in addition the sum of £5 for the expense of such journey and valuation.”

After this agreement the plaintiffs advertised the island for sale by auction, and it was in due course (on August 19, 1862) put up for sale at the Auction Mart, and was bought in. Mr. Hyde, who afterwards became the purchaser of the property, attended the sale, but as he had not seen the island he was not a bidder. The plaintiff, after the failure to sell by auction, still negotiated with parties for the sale of the property, and exerted himself to find a purchaser. On August 29, 1862, the defendant wrote to the plaintiff stating that he had arranged a loan upon Herm, and adding, "I withdraw the sale of the island for the present." At this time the defendant was negotiating with Mr. Hyde for the sale of the property. On September 6 defendant sold the island to Mr. Hyde, and on October 10 the purchase was completed. The plaintiff, hearing of the sale to Mr. Hyde, brought his action to recover £62 10s., as "commission on the sale of the island of Herm per agreement. Amount £2,500 at 2½ per cent. commission (including the expenses of putting the property up to sale by auction)." The jury having found a verdict for plaintiff for £39 10s. beyond the £25 paid into Court, a rule was afterwards obtained calling on the plaintiff to show cause why the verdict at the trial should not be set aside, and a new trial had on the ground that the plaintiff was not entitled to recover more than the £25 paid into Court, and that before defendant sold the property, he withdrew plaintiff's authority to sell it for him.

Lord Chief Justice Erle, in giving the judgment of the Court, said: I am of opinion that this rule should be discharged. By the terms of the agreement between these parties, the plaintiff was to be entitled to commission if the estate should be sold by him. The estate was not actually sold by him, but the defendant, Bartlett, after the plaintiff had advertised the sale, and had put up the property for sale by auction, wrote to the plaintiff and withdrew the property from the sale for the present. In the meantime, and before the sale was withdrawn, the defendant and Hyde were negotiating for the sale and purchase of the property. This is a question which has been not unfrequently litigated, and the rule is well established, that where the relation of buyer and seller exists, and a sale is brought about by what the agent does, he is the *causa causans*, the sale is to be regarded as brought about by him, and

he is entitled to his commission upon it. For this reason it seems to me this rule must be discharged.

Mr. Justice Williams, in concurring, said the meaning of the contract is, that if the sale be brought about through the plaintiff's energy, he is to be entitled to the commission. In the present case the purchaser attended the sale, and the purchase must be taken as having been brought about through the means of the plaintiff.

Mr. Justice Willes and Mr. Justice Byles concurred.

Counsel for the plaintiff: Serjeant Shee and Mr. Talfourd Salter; counsel for the defendant: Mr. Coleridge, Q.C., and Mr. Day.

Clark and another v. Smythies and another.

(*The Times*, July 7, 1860.)

July 6, 1860.

In the absence of a special agreement it is a question for a jury to decide whether charges are reasonable according to the custom of the profession.

The plaintiffs in this action were Messrs. Clark and Lye, auctioneers, and they sued the defendants, John Kinnersley Smythies and George Smythies, his brother, to recover the sum of £455 2s. 9d. for commission alleged to be due on two attempted sales, and upon an actual sale of a portion of the Lynch Court and Bearwood estates, near Leominster. The defendants paid £400 into Court, and denied any further liability.

It appeared that on August 22, 1854, Mr. Smythies, the barrister, wrote a letter to the plaintiffs (at the time known as the firm of Farebrother, Clark and Lye), stating that he had advertised the Lynch Court and Barewood estates for sale, without success, and he thought of offering them by auction, and asking to be informed what the plaintiffs' terms would be for a sale at Hereford or Leominster if the land were sold, and also what their terms would be if the reserved price should not be reached. The value of the property, exclusive of the manors, was stated to be about £25,000. The plaintiffs replied next day, enclosing their scale of charges, "the commission being payable if the estate be sold before, at, or within six months after the auction"; and "if not sold within the time limited, the charge for trouble will be 30 guineas, exclusive of all expenses." Mr. Smythies replied on August 28, stating

that he presumed it made no difference whether the land was sold in one or more lots, and that the commission was charged on the total sum realised by the sale, and, if so, wishing the plaintiffs to proceed with the sale as soon as they thought it sufficiently advertised. This was acceded to, and arrangements were made to sell the estate by auction, at Hereford, on November 8, 1854. Mr. Clark, the plaintiff, and one of his clerks went down to Hereford on that day to hold the sale, but as there were no bidders the property was not put up, and Mr. Clark returned to London. On July 10, 1855, Mr. Smythies called at the plaintiffs' office, and gave instructions to put up the property for sale in London; and it was accordingly again advertised, and put up for sale at Garraway's on September 12, 1855, but bought in. The plaintiffs continued from time to time to advertise the property for sale by private contract, but no sale was effected, and at length, in the year 1859, Mr. Smythies informed them that he had found a purchaser for a portion of the estate for £14,000. The plaintiffs were then requested to send in their account, which they did accordingly. They charged 30 guineas on each of the two attempted sales—at Hereford in 1854 and at Garraway's in 1855, in addition to two sums of £95 8s. 3d. and £79 3s. 6d. for expenses. They also charged £207 15s. 6d. for commission, at the rate of $1\frac{1}{2}$ per cent. on the sum of £13,850, which the portion of the estate sold in 1859 actually fetched. Mr. Clark, in cross-examination, said he had charged £14 9s. 8d. for his travelling expenses and expenses of sale, though his hotel bill, which was produced, showed that he had only been charged £2 4s. 9d. for his hotel expenses. He added that it was before the direct railway to Hereford was open, and he went there by way of Shrewsbury, and slept at Shrewsbury the preceding night. He admitted that he had originally charged £33 9s. for advertisements, though on reference to the vouchers he subsequently found out that he ought to have charged only £9 10s. One item of £19 19s. was for printing particulars, bills, etc., and this sum he analysed thus: £7 19s. for printing particulars, £2 for printing bills, and the remaining £10 for posting, etc. The plaintiff admitted that previous to the action being brought Mr. Smythies had called and tendered the sum of £400 in discharge of the claim, but that offer was refused, and he added that out of his claim for £455

2s. 9d., as much as £298 was for costs paid out of pocket.

The defence was that there was one contract entered into by the defendants, that the contract was a continuing one, and that the plaintiffs could not recover their commission and also the 30 guineas for expenses for each of the attempted sales. The plaintiffs' original demand was £571 16s. 9d. That demand they had now reduced to £455 2s. 9d., but the sum of £400 which the defendants had paid into Court was more than the plaintiffs were entitled to recover. Mr. J. K. Smythies was called, and said he had given the plaintiffs no instructions to put up the property for sale at Garraway's. He called at their offices from time to time, to ascertain whether they were likely to sell the property, and on July 10 Mr. Clark suggested that they had better put it up for sale in London, to which Mr. Smythies made no objection, though he gave no instructions on the subject. He attended the sale at Garraway's when the property was bought in, and left the room without even speaking to Mr. Clark. In a few days an advertisement appeared in the "Times," stating that the property was for sale by private contract. The defendant said that the plaintiffs, in putting up the property for sale a second time, were acting for their own benefit, and not by his instructions.

Lord Chief Justice Cockburn, in summing up, said he thought the first contract came to an end at the expiration of six months from the attempted sale at Hereford, and his Lordship left it to the jury to say what amount, if any, the plaintiffs were entitled to recover for their services after that time. The jury found for the plaintiffs for the amount claimed—viz., £55 2s. 9d. beyond the sum of £400 paid into Court.

Counsel for the plaintiffs: Mr. Lush, Q.C., and Mr. Prentice; counsel for the defendants: Mr. Gray and Mr. J. J. Powell.

Prickett v. Badger.

(1 C.B.N.S., 296.)

November 20, 1856.

Principal declining to sell—Agent entitled to be remunerated for his trouble on a quantum meruit—Contract to remunerate implied by law.

The plaintiff in this case was a house and estate agent, and the defendant was lord of the manor of

Highbury. In the month of July, 1852, the defendant called upon the plaintiff and, according to the latter's evidence, represented that he had an interest in a piece of land containing about 14 acres, parcel of the manor, and proposed to the plaintiff to look out for a purchaser at the price of about £650 per acre. The plaintiff agreed to do so, at the same time telling the defendant that his terms would be a commission of $1\frac{1}{2}$ per cent. on the amount of the purchase money. The plaintiff immediately set about preparing a plan and advertisements, wrote letters to and had communications with several people, and ultimately in November received an offer of £675 per acre from the Birkbeck Land Society. The defendant then for the first time informed the plaintiff that he had no interest in the land, but that it belonged to a Mr. Wagstaff, and Wagstaff at first stated that he himself had not completed the purchase of the land, and afterwards declined to sell it to the Birkbeck Land Society. In January, 1853, the plaintiff was desired by Wagstaff to take no further steps in the matter. On cross-examination the plaintiff admitted that he had been informed by Wagstaff, in September, 1852, that he had an interest in the land and that it could not be sold without him.

At the close of the plaintiff's case it was submitted on behalf of the defendant that the action was wrong in form, for that the plaintiff's own evidence showed that the only contract, if any, between the parties was a special contract for commission of $1\frac{1}{2}$ per cent. on his accomplishing a sale of the land, and that the action should have been a special action for wrongfully withdrawing the authority to sell. The Lord Chief Baron overruled the objection, holding that it was competent to the plaintiff to sue upon a *quantum meruit*, and compared the case to that of a man who having a house which he is desirous of letting or selling places it in the hands of several house agents, in which case, he said, though the successful agent alone would be entitled to claim commission, the others would be justified in suing for something for their trouble. The defendant and Wagstaff were then called, and the former stated that the land in question was for sale at about £600 or £700 per acre; he had never asserted that it was his own, or that he had any interest in it, and never employed the plaintiff to offer it for sale. He also said that the land had never been sold, and that

no demand in respect of commission or otherwise had ever been made of him by the plaintiff until the year 1885. Wagstaff stated that neither the plaintiff nor anyone else had had any authority from him to offer the land for sale.

In leaving the case to the jury, the Lord Chief Baron told them that, though the plaintiff was not under the circumstances entitled to the $1\frac{1}{2}$ per cent. commission, he was still entitled to recover a reasonable remuneration for his services, and they returned a verdict in his favour with £50 damages. The defendant appealed to the Court of Common Pleas, and it was there held that though there must be a new trial, as the Lord Chief Baron was not satisfied with the verdict, yet that there had been no misdirection in the law of the case. The following is a *résumé* of Sir Richard Crowder's judgment: There was no misdirection in this case. The defendant having declined, from whatever cause, to sell the land after the plaintiff had succeeded in procuring a purchaser willing to take it at the price proposed, and the plaintiff having thus done all he could to entitle him to the stipulated commission, the Lord Chief Baron ruled that although the plaintiff could not maintain an action upon the special contract, he was nevertheless entitled to recover a reasonable remuneration for his work and labour. The ruling is perfectly consistent with the law laid down in "*Cutter v. Powell*" (2 Smith's Leading Cases). The learned editors say: "It is an invariably true proposition that wherever one of the parties to a special contract not under seal has, in an unqualified manner, refused to perform his side of the contract, or has disabled himself from performing it by his own act, the other party has thereupon a right to elect to rescind, and may on doing so immediately sue on a *quantum meruit* for anything which he has done under it previous to the rescission." They also observe, "It being therefore established that where one contractor has absolutely refused to perform, or has rendered himself incapable of performing, his part of the contract, the other contractor may, if he please, rescind, such act or refusal being equivalent to a consent to the rescission, the remaining part of the question above stated is that, upon such a rescission, he has a right, if he has done anything under the contract, to sue immediately for compensation on a *quantum meruit*. That he should do so is consistent

with reason and justice, for it is clear that the defendant cannot be allowed to take advantage of his own wrong, and screen himself from payment for what has been done by his own tortious refusal to perform his part of his contract, which refusal alone has enabled the plaintiff to rescind it. He cannot, however, recover on the special contract, and must therefore be entitled to sue upon a *quantum meruit* founded on a promise implied by law on the part of the defendant to remunerate him for what he has done at his request; and as an action on a *quantum meruit* is founded on a promise to pay on request, and there is no ground for implying any other sort of promise, he may of course bring his action immediately." The learned judge proceeded to say: It is insisted on the present occasion that the Lord Chief Baron should have left it to the jury, whether, under the circumstances, a contract for reasonable remuneration was to be implied. It seems to me, however, that this is a question of law and not a question for the jury. Under the circumstances proved, a contract was implied by law to pay the plaintiff a reasonable remuneration for his labour, and consequently the direction was correct. The ordinary rule as to employing an agent to let or sell for a certain commission, where the authority is revoked before anything has been done under it, does not apply to the present case.

Counsel for the plaintiff: Mr. Serjeant Shée and Mr. Hawkins; counsel for the defendant: Mr. Montague Chambers, Q.C., and Mr. Hance.

Fisher v. Drewett.

(39 L.T. Rep., N.S., 253.)

June 24, 1878.

Procurement of loan—Commission "on any money received"—Non-receipt through default of principal.

The plaintiff was a mortgage broker, and the defendant, being anxious to raise a loan on the security of house property, entered into the following agreement with him:—"Sept. 21st, 1876.—Dear Sir,—In the event of your procuring me the sum of £2,000, or such other as I shall accept, I agree to pay you a commission of 2½ per cent. on any money received.—Yours truly, E. Drewett. Mr. Fisher." A good deal of work

was done by the plaintiff in endeavouring to procure the loan, and ultimately he discovered and introduced the Temperance Building Society to the defendant, who agreed to advance such a sum on the defendant's property as their surveyor should certify to. The surveyor fixed the sum at £1,625, and the society offered that amount to the defendant subject to his showing a good title to his property, and that offer was accepted by the defendant. When the title came to be investigated, the defendant furnished an abstract of title which the society's solicitors were not satisfied with, and required a further abstract. This the defendant declined to furnish on the ground of expense, and the matter went off, and the loan was refused.

The defendant having declined to pay the plaintiff his commission on the £1,625, on the ground that he had never received that sum, an action was brought, and, after two trials, a verdict was given for the plaintiff. Upon appeal this verdict was upheld, and it was decided that the plaintiff was clearly entitled to his commission, in spite of the defendant's contention that the contract was only to pay commission upon the money being actually received by the defendant. In giving judgment to this effect Lord Justice Bramwell said: There are, of course, many things which may have been in the contemplation of the parties when they drew up this agreement. One may have been that the defendant should pay to the plaintiff on such money as he might receive, having the right to receive capriciously any money whatever; another would be that the defendant should have a right to refuse to receive, and not having received should be entitled to refuse the commission, if he had a good reason for refusing to receive: or they might have contemplated that the plaintiff should not earn his commission if the non-receipt of the money by the defendant was due to the fault of the lenders; and, fourthly, it may be that the word "receive" is really equivalent to the word "accept" used before in the document, which, taken as a whole, means "If you get me such a sum as I shall agree to, I will pay you a commission of 2½ per cent. on the sum agreed to be lent." Now the current of modern opinion is to the effect that those who bargain to receive commission for introductions have a right to their commission as soon as they have completed their portion of the bargain, irrespective of what may

take place subsequently between the parties introduced. And it is reasonable that it should be so. Why should the right to be paid for work depend on what takes place between other parties outside the contract. However, even if the rule that the agent is entitled to his commission when he has done his part, whatever may happen subsequently to prevent his work having effect, is confined to the case where the failure has arisen through the default of the employer, the defendant will not profit, for he has given no evidence of the default being in anyone but himself. He would not give an abstract of title and so could not get the money. The plaintiff has procured him a contract which would enable him to "receive" the £1,625, and it is by his own default that he has not received it. Lord Justices Baggallay and Thesiger concurred.

Counsel for the plaintiff: Mr. Smalman Smith;
counsel for the defendant: Mr. H. F. Dickens.

Mansell and another v. Clements.

(L. Rep., 9 C.P., 13 J.)

January 31, 1874.

House agent—Right to commission on sale of a lease through his intervention.

The defendant, in March, 1873, called upon the plaintiffs, who were auctioneers, valuers and house and estate agents at Norwood, and told them that she held the house called Woodfield, at Beulah Hill, for an unexpired term of 37 years, at the yearly rent of £120, and that she was desirous of disposing of it for a premium of £2,200, the fixtures and outdoor effects to be taken at a valuation. On the 26th of that month the plaintiffs received from the defendant a letter as follows:—Mrs. Clements wishes to have in writing the terms for selling her place, and also that such charges would be made only in case of its being bought by any person recommended by you, and a statement of what charge will be made by you if the place is disposed of without your intervention?" On the same day the plaintiffs replied as follows:—"Madam,—Our terms for letting or selling are as follows:—5 per cent. on one year's rent; 2½ per cent. on the amount received as premium. If you let on lease without premium an additional 2½ per cent. on the second year's rental, 5

per cent. on any sum obtained for fixtures or furniture, whether by valuation or otherwise. If disposed of without our intervention a charge of one guinea will be made for the trouble, etc., we may have had, advertisements, etc., but these will not be inserted without your directions."

The defendant thereupon, through a gentleman named Bowra, instructed the plaintiffs to place the house on their books for sale. The plaintiffs gave cards to view the premises, and amongst others one was given to a Mr. Upton under the following circumstances:—In July, Mr. Upton, who was looking out for a house in the neighbourhood, saw a board up announcing Woodfield for sale, and referring to one Phillips, a stationer, at Norwood. Upton knocked at the door, but being informed by the servant that there was a wedding party in the house, said he would call again. On leaving Woodfield, Upton went to the plaintiffs' office and inquired of a clerk what houses were to be had in the neighbourhood. The clerk thereupon gave him cards to view five different houses, Woodfield being one of them, and, on the back of the card relating to that house, the clerk wrote the particulars—"Lease and rent. Premium, £2,200; rent, £120; term unexpired, 37 years; and fixtures, etc., at a valuation."

A few days afterwards Upton again went to Norwood, and was shown over Woodfield by Mr. Bowra; and on leaving he verbally offered £1,700 premium for it, which offer Bowra promised to submit to the defendant. After some correspondence between Bowra and Upton, the negotiation was broken off, but it was after a time renewed and Upton's offer was ultimately accepted, and the premises were conveyed to Upton at that price, the plaintiff never having in any manner interfered or been consulted. Mr. Upton was called as a witness, and stated that when he left Woodfield on the first occasion he abandoned all notion of purchasing the property, thinking that the price would exceed his limit; but that when he learned what was asked for it he determined to go there again. He was then asked "Would you, if you had not gone to the plaintiffs' office and got the card, have purchased the house?" and answered, "I should think not." Under the direction of Mr. Justice Denman a verdict was ultimately taken for the plaintiffs for £51, leave being reserved to the defendant to move to enter a non-suit or a verdict for

her if the Court of Common Pleas should be of opinion that the plaintiffs were not entitled to be paid commission, the purchaser not having been found through their intervention. The Court, however, upon being so moved, sustained the verdict and held that the plaintiffs were entitled to commission. Mr. Justice Keating observed: Upton, when he first went to the house, was under the impression that it was too large. On his way to the railway station he called at the plaintiffs' office to inquire about houses. He then received information which he had not acquired before, and that led him to go again to the house; it was not suggested that there was anything else to induce him to go there. In ninety-nine cases out of a hundred the services performed by the house agent upon these occasions is of the slightest possible kind; it consists for the most part in merely bringing the vendor and the purchaser together so as to result in a sale, and it is often done by a line written or a word spoken.

Counsel for the plaintiffs: Mr. Huddleston, Q.C., and Mr. Edmund Thomas; counsel for the defendant: Mr. A. Lawrence and Mr. J. O. Griffiths.

INDEX.

—o:—

ADVERTISING

means of bringing parties together, 178.

AGENTS AND AUCTIONEERS

more than one employed, 127, 134, 139, 149, 151,
202, 212, 231, 238, 241, 248, 257, 266, 305,
315, 355, 372.

more than one paid commission, 6, 117, 151, 161,
207, 298.

for sale and for letting, 62 (*and see Authority*).

notice at head of their lists, 4.

breach of faith on the part of, 116.

must look to real employers, 18.

principal instructing and then refusing to sell, 34.

may claim commission where principal unable to
make a title, 5, 25, 32.

must have special agreement before claiming com-
mission from both sides, 31, 141, 262 (*and see*
Agreement).

where instructed and afterwards principal negotiates
personally, 68, 75, 154, 165, 176, 261.

right to commission where vendor fails to comply
with requisitions as to title, 41.

may claim commission from principal or the agent
of principal, 46.

cannot claim commission when no business has been
done, 86, 170, 200, 204.

retaining deposit, 188.

not fully instructed, 310.

AGENTS AND AUCTIONEERS—continued.

- must accept principal's limit as to price, 87.
- where working for other agents, 88.
- right to commission though rent not paid, 104, 115.
- claim of clerk, 136.

AGREEMENT

- commission payable on signing, 24.
- solicitor signing, 25.
- express needed before commission can be claimed
 - from both sides, 31, 141, 285, 316, 318, 322.
- express as to time, 242.
- interpretation of, 33.
- reasonable time to supply draft, 47.
- signed under misapprehension, 71.
- to remunerate, implied by law, 308.
- as to sharing commission, 168, 173, 191.
- costs of preparing, 114.
- to pay withdrawal fee, 28.
- disputed, 52, 86, 143, 175, 215, 253, 255, 311, 327,
337, 340, 370.
- to pay lump sum, 125.

AUTHORITY

- alleged revocation of, 22, 216, 362.
- revoked by lapse of time, 23.
- to let, not general authority to find purchaser, 26,
171, 183, 193, 197, 233, 342.
- revocation of, 75, 81, 82, 98, 158.
- disputed, 301.
- to take deposit, 208.

BUILDING LAND

- commission on introduction of purchaser, 97.
- introduction of builder, 74.

"CHAIN"

- in case of indirect introductions, 2, 94, 181, 236.

CIRCULARS AND POSTERS

means of bringing parties together (*see Indirect Introduction.*)

COUNTERCLAIM

for commission, 53, 80, 148.

CUSTOM OF TRADE

right to charge commission according to, 5, 13, 96, 108, 165, 183, 277, 315, 318.

right to retain property after unsuccessful auction, 358.

as to lots bought in at auction, 7.

as to rate of commission where property large, 10.

as to charges a question for a jury, 379.

disputed, 33.

where property not put up but withdrawn by vendor, 34.

as to commission on assignment of lease, 38.

where brewery sold, 45.

where public-house or hotel sold, 96, 103, 169.

where builder introduced, 74, 90, 97.

as to dividing commission, 168, 250, 356.

must be general, notorious, and strictly proved, 82, 176, 233, 341, 361.

DAMAGES (*see Quantum Meruit.*)**"FRIENDLY TRANSACTION,"** 39.

INDIRECT INTRODUCTION, 2, 16, 70, 91, 94, 106, 110, 116, 130, 137, 147, 150, 182, 237, 251, 272, 274, 320, 346, 377, 386.

"chain" complete, 2, 181, 236, 278.

commission payable in respect of, as well as by firm absolutely selling, 6, 17, 117, 134, 137.

must be the efficient and not the remote cause of sale, 27, 30, 131, 133, 271, 273, 280.

in cases of, a purchaser must be introduced in that capacity, 43, 333.

INTERPLEADER, 372.**LIST**

notice at head of, 4.

presumption that it has been read by client, 4.

LOAN

commission on procuring, 112.

proposed lender must be able and willing to lend,
50.

non-receipt of through default of principal, 384.

not really procured by agent, 93.

LOTS

commission on when bought in at auction, 7.

MORTGAGE

procuration fee for obtaining, 58.

no fixed scale of charges, 58.

NEGOTIATIONS

continuous, 17, 138, 155, 166, 198, 247.

broken off, 30, 54, 113, 183, 240.

neglect of principal in carrying through, 46.

NOTICE

at head of auctioneer's list, 4.

to agents where several employed, 139.

PARTNERSHIP

introducing member, 31, 39.

"PRESENT"

promise of, 77, 288.

PRICE

principal's limit must be accepted, 87.

PROPERTY

put up, but afterwards sold by private contract by
principal (*see Agents and Auctioneers.*)

misdescription of, 351.

PUBLIC-HOUSE OR HOTEL (*see Sale.*)

PURCHASE

incomplete, 11 (*and see Sale.*)

PURCHASER

insolvency of, 24.

introduction of at auction sale, 267, 275.

must be "ready and willing," 304, 324.

refusing to complete owing to alleged misrepresentations of vendor, 48, 73.

where no *bona fide* purchaser put forward commission not recoverable, 56.

lunatic, 188.

QUANTUM MERUIT

in lieu of commission, 7, 22, 36, 43, 101, 158, 159, 179, 190, 228, 260, 300, 381.

measure of damages on a, 36.

RATE OF COMMISSION

where property large, 10.

evidence of custom as to, 13, 90, 153, 210.

disputed, 20, 79, 105, 109, 121, 140, 249, 258, 264, 331, 350.

"READY AND WILLING" (*see Purchaser.*)

REDUCTION

of commission to party in trade, 61.

REQUISITIONS AS TO TITLE (*see Agents and Auctioneers.*)

RETAINER

evidence of necessary, 15, 100, 120, 122, 143, 146, 152, 177, 185, 191, 193, 213, 226, 243, 256, 307, 339, 370.

stamping, 353.

REVOCATION (*see Authority.*)

SALE

- not really effected by introduction, 1.
- by owner to party previously present at auction, 19, 36, 111.
- by second agent after auction, 365.
- must be a binding agreement for before commission can be claimed, 3, 155, 167.
- where abortive owing to defect in vendor's title, 5, 25, 32.
- where abortive through purchaser failing to complete, 9.
- where none, commission not recoverable though work done, 200.
- non-completion of, 11, 224, 230, 263.
- whether really brought about by introduction, a question of fact for a jury, 27, 62, 126.
- of brewery, 45, 322.
- of hotel or public-house, 96, 103, 285, 313, 316.
- where abortive through alleged misrepresentation of vendor, 48, 73.
- in cases of, seller may make his choice between two buyers, 88, 156.
- special conditions of, 122.
- by defendant's land agent, 283.
- time not of essence of contract in, 287.
- time limit, 335.

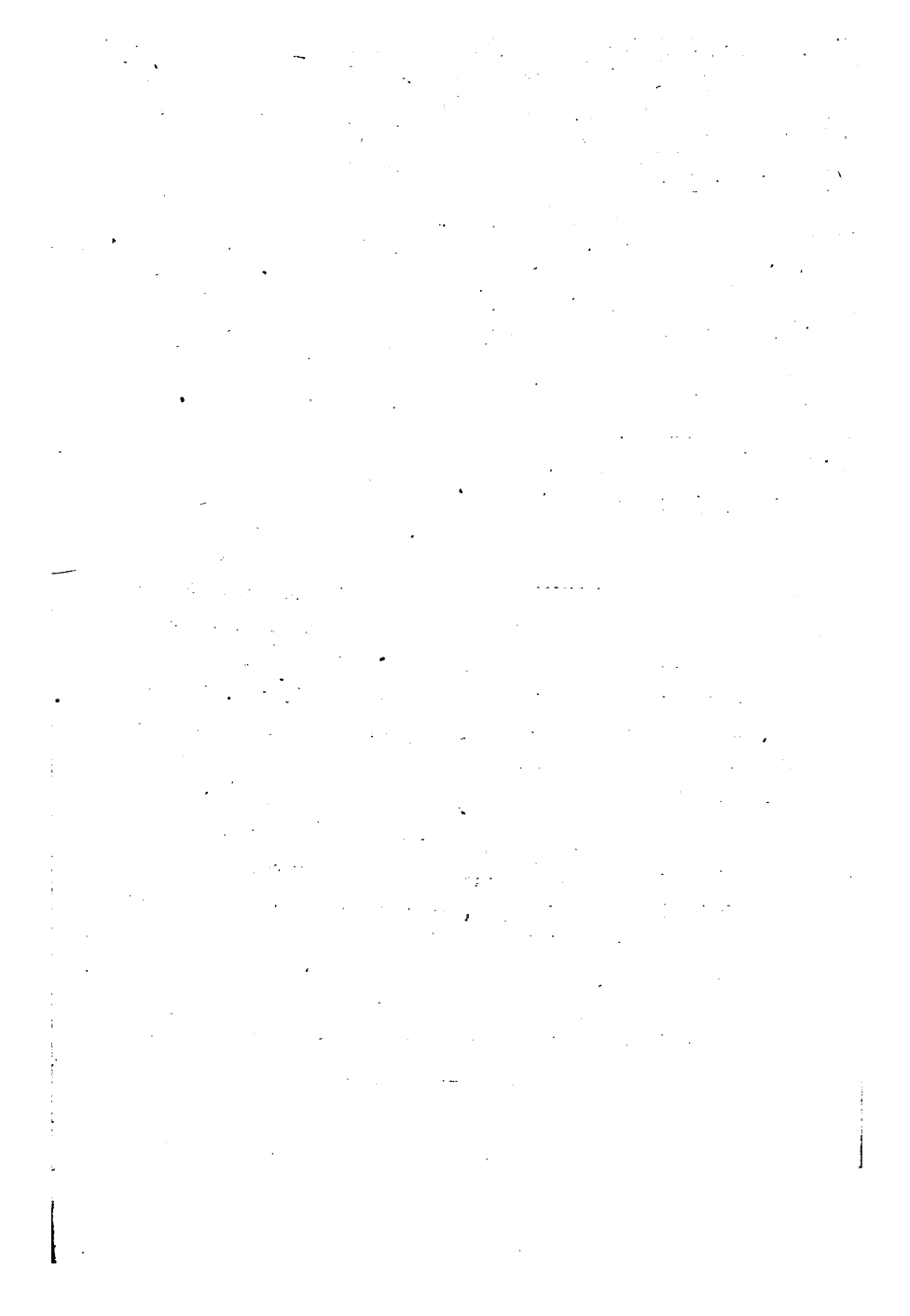
SCALE (*see Rate of Commission.*)

SOLICITOR

- signature of commission note by, 25.
- unauthorised employment of, 109.
- authority of, 243.

THEATRE

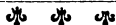
- obtaining tenant for, 187.



CROWN 8VO. PRICE 5s.

*Where Cash accompanies Order, the Book will be forwarded
post free.*

The Land & House Property YEAR BOOK.



Showing at a glance the Results of Sales for
the Year.



This Book will prove invaluable to Investors and Speculators in Land or House Property. It gives in alphabetical order all the Sales which have been effected at the London Auction Mart during the year. For example, if an investor desires property at Barnsbury, he has only to turn to that district to ascertain how property sold, and whether it was Freehold, Leasehold, or Copyhold, and the nature of the rent. Investors are thus put into possession of important facts as to the value of property at auction in any district in London or the suburbs, as well as the country. The volume which is of handy size, is alphabetically arranged, particulars of the properties briefly described, the date of sale, and price realised indicated. The results of Sales in the suburbs and chief provincial centres are also given. To Professional Men and Investors it is an indispensable *vade mecum* for the Auction Mart.



Copies of the edition for 1892, 1893, 1894, 1895 and 1896
can still be obtained.

Books pu

For Cash

Seco
AUCTION E
for Auc
POCOOE

JSN JAD BSG
A compendium of commission cas
Stanford Law Library



3 6105 044 654 163

ITE Office

ed post free.

5s. net.
rk of reference
W. ARCHBUTT

New Edition. Demy 8vo. Price 5s. net.
THE AUCTIONEERS' MANUAL.—A complete Guide to the Law and Practice of Auctioneers. Contains Scales of Professional Charges, Forms of Agreement, Specimen Title Pages, Conditions of Sale and Catalogues, Methods of Keeping Accounts of Sales, &c., &c.

Second Edition. Crown 8vo. Price 5s. net.
DILAPIDATIONS, The Law and Practice of.—A valuable Guide and Handbook to this difficult subject. By A. T. MACER, P.A.S.I., The legal matter revised by SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law. New Edition thoroughly revised and brought up to date.

Crown 8vo. Price 5s. 6d. net.
COMMISSION CASES, A Compendium of.—Contains a collection of all important cases as to Auctioneers' and Estate Agents' Commission. By G. ST. LEGER DANIELS, LL.B. (Lond.), of the Middle Temple, Barrister-at-Law.

Crown 8vo. Price 5s. net.
THE LAND AND HOUSE PROPERTY YEAR BOOK.—Published annually. A Guide to Investment in Real Estate, showing at a glance the Results of Sales at the London Auction Mart, as well as in the Suburbs and the Principal Provincial Centres.

Second Edition. Crown 8vo. Price 5s. net.
THE LAW OF FIXTURES, with Appendix of Statutes, Leading Cases, &c. By SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law.

Third Edition. Crown 8vo. Price 5s. 6d. net.
LAW OF DISTRESS.—A comprehensive Guide, containing the text of the Law of Distress Amendment Act and the New Rules thereunder; carefully revised, with References and Cases brought up to date. By G. ST. LEGER DANIELS, LL.B. (Lond.), of the Middle Temple, Barrister-at-Law.

By the same Author. Crown 8vo. Price 5s. net.
LEASES, Principles and Points.—A Handbook to the Law of Leases; for Landlords, Tenants, and House Agents.

Crown 8vo. Price 5s. net.
METROPOLITAN SANITATION, with Appendix.—Containing the Public Health Act, 1891; the Bye-Laws issued by L.O.C. and local authorities; also the various Sanitary Regulations in force throughout the Metropolis. By W. HERBERT DAW, F.S.I.

Crown 8vo, 800 pp. Net 10s. 6d.
RATING.—This work, which is written from a Surveyor's standpoint, gives under three heads—Principles, Practice and Procedure—a clear and comprehensive survey of all the matters appertaining to this difficult subject. In addition to the pages devoted to the rating of land and buildings, exhaustive chapters are devoted to the complex points arising out of the rating of Railways, Canals, Tramways, Gas and Water Companies, Docks, Harbours and Piers.—By MICHAEL FARADAY (Rating Surveyor), the legal matter revised by STANLEY A. LATHAM, LL.B., of the Parliamentary Bar, A.L.O.A., F.E.S.S.

A complete list, comprising particulars of many other works, will

FRANK P. V

London, E.C.